

KENTUCKY LABOR CABINET
OCCUPATIONAL SAFETY AND HEALTH PROGRAM
FIELD OPERATIONS MANUAL
CHAPTER 3 GENERAL INSPECTION PROCEDURES

CHAPTER III

GENERAL INSPECTION PROCEDURES

A. CSHO Responsibilities.

1. The primary responsibility of the Compliance Safety and Health Officer (CSHO) is to carry out the mandate given to the Secretary of Labor, namely, "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions...." To accomplish this mandate the Kentucky Occupational Safety and Health Program employs a wide variety of programs and initiatives, one of which is enforcement of standards through the conduct of effective inspections to determine whether employers are:
 - a. Furnishing places of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to their employees, and
 - b. Complying with safety and health standards and regulations promulgated under the Law.
2. The conduct of effective inspections requires identification, professional evaluation and accurate reporting of safety and health conditions and practices. Inspections may vary considerably in scope and detail, depending upon the circumstances in each case.

B. Preparation.

1. General Planning. It is most important that the CSHOs spend an adequate amount of time preparing for an inspection.
 - a. CSHOs shall plan individual work schedules in advance in coordination with their supervisor reflecting the priorities in Chapter II.
 - b. Supervisors shall ensure that CSHOs carefully review data available at the Office for information relevant to the establishments scheduled for inspection. These may include inspection files, other establishment files and reference materials. When CSHOs need additional information concerning the type of industry to be inspected, the supervisor shall be consulted.
 - c. During review of previous inspection case files, CSHOs shall note those citations that were issued and their abatement status as documented in the case file, especially those high gravity serious and willful.
2. Preinspection Planning. Due to the wide variety of industries and associated hazards likely to be

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encountered, preinspection preparation is often helpful to the conduct of a quality inspection. The CSHO together with the supervisor, if appropriate, shall carefully review:

- a. All pertinent information contained in the establishment file and appropriate reference sources to become knowledgeable in the potential hazards and industrial processes that may be encountered and shall identify the personal protective equipment necessary for protection against these anticipated hazards.
 - b. Appropriate standards and sampling methods and, based on experience and information on file concerning the establishment, shall select the instruments and equipment that will be needed for the inspection and prepare them according to the standard methods of sampling and calibration.
3. Preinspection Compulsory Process. 803 KAR 2:070 authorizes the agency to seek a warrant in advance of an attempted inspection if circumstances are such that "preinspection process (is) desirable or necessary." The Law authorizes the agency to issue administrative subpoenas to obtain necessary evidence with no time restrictions.
- a. Although agency policy is generally not to seek warrants without evidence that the employer is likely to refuse entry, the Secretary may, on a case-by-case basis, authorize the Director to seek compulsory process in advance of an attempt to inspect or investigate whenever circumstances indicate the desirability of such warrants.
- NOTE: Examples of such circumstances would be evidence of being denied entry in previous inspections, or awareness that a job will only last a short time or that job processes will be changing rapidly.
- b. Administrative subpoenas may also be issued prior to any attempt to contact the employer or other person for evidence related to a KY OSH Program inspection or investigation. (See OSHA Instruction ADM 4.4.)
4. Inspection Materials and Equipment. The CSHO shall have all report forms in sufficient quantity to conduct the inspection, all assigned personal protective equipment available for use and in serviceable condition, and appropriate handouts, if available.
- a. If, based on the preinspection review or upon facts discovered at the worksite, a need for unassigned personal protective equipment is identified, the supervisor shall ensure that any required equipment is provided. Prior to the inspection, the supervisor

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shall ensure that the CSHO has been trained in the uses and limitations of such equipment.

- b. Unless an exception is authorized by the supervisor because of the nature of the worksite (e.g., a worksite where no overhead hazards, eye hazards, and/or foot hazards are likely to be present), approved hard hats, approved safety glasses with permanently or rigidly attached side shields, and approved safety shoes shall be worn by CSHOs on the walkaround phase of all inspections. This will set an example for industry and provide minimum acceptable protection for the CSHO.
 - c. Inspections involving the use of negative pressure respirators shall not be assigned without the CSHO's having had an adequate qualitative fit test within the last year. Since respirators with tight-fitting face pieces require the skin to be clean shaven at the points where sealing occurs, CSHOs assigned to conduct inspections which involve the use of such respirators shall not have interfering facial hair.
 - d. If there is a need for special or additional inspection equipment, the supervisor shall be consulted to ensure that training in the use and limitation of such equipment has been accomplished prior to the inspection. The supervisor shall ensure that a review or recheck in the use of all equipment is given to the CSHO at least once a year.
5. Expert Assistance. The Program Manager shall arrange through the Director for a specialist from within OSHA to assist in an inspection or investigation when the need for such expertise is identified. If OSHA specialists are not available, or when otherwise desirable, the Program Manager shall arrange for the procurement of the services of qualified consultants. For further details on the selection of experts, see Chapter VIII, D.2.
- a. Expert assistance may be necessary during inspections for the implementation of engineering or administrative controls involving, but not limited to, noise, air contaminants, complicated machine guarding and construction.
 - b. OSHA specialists may accompany the CSHO or perform their tasks separately. A CSHO must accompany outside consultants. OSHA specialists and outside consultants shall be briefed on the purpose of the inspection and personal protective equipment to be utilized.
 - c. All data, conclusions and recommendations from the assigned specialists shall be made part of the inspection report, including information on any resultant actions.

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6. Safety and Health Rules of the Employer. 803 KAR 2:070 requires that the CSHO comply with all safety and health rules and practices at the establishment and wear or use the safety clothing or protective equipment required by KY OSH Program standards or by the employer for the protection of employees.
7. Immunization and Other Special Entrance Requirements. Many pharmaceutical firms, medical research laboratories and hospitals have areas which have special entrance requirements. These requirements may include proof of up-to-date immunization and the use of respirators, special clothing or other protective devices or equipment.
 - a. The CSHO will not enter any area where special entrance restrictions apply until the required precautions have been taken. It shall be ascertained prior to inspection, if possible, if an establishment has areas with immunization or other special entrance requirements. If the supervisor and CSHO cannot make a determination through consultation, the Program Manager or supervisor may telephone the establishment using the following procedures. Such communication will NOT be considered advance notice. (See 803 KAR 2:070 and C of this chapter if advance notice is to be given.)
 - (1) Telephone as far in advance of the proposed inspection date as possible so the employer cannot determine a time relationship between the communication and a possible future inspection.
 - (2) State the purpose of the inquiry and that an inspection may be scheduled in the future. DO NOT GIVE A SPECIFIC DATE.
 - (3) Determine the type of immunization(s) and/or special precautions required and the building or area which has restricted access.
 - b. If immunization is required, the supervisor shall ensure that the inspecting CSHO has the proper immunization and that any required incubation or waiting period is met prior to the inspection. Those immunizations necessary to complete inspections will be provided by the office. (See D.8.e.(2) for procedures to follow if immunization areas are initially identified during walkaround.)
8. Personal Security Clearance. Some establishments have areas which contain material or processes which are classified by the U.S. Government in the interest of national security. Whenever an inspection is scheduled for an establishment containing classified areas, the supervisor shall assign a CSHO who has the appropriate

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security clearances. If unavailable the Director shall contact the OSHA Area Office for assistance.

- a. Clearance Procedures. Reserved.
- b. Employer Resistance. For worksites with limited areas subject to DOD security regulations, where the CSHO does not have the necessary clearance requirements, the employer shall be asked to immediately contact the cognizant DOD Regional Industrial Security Office and shall make arrangements which allow the CSHO to complete the investigation or inspection without breaching security requirements. Resistance to CSHO's with the proper clearances which can be telephonically checked shall constitute an unwarranted resistance and shall be immediately brought to the attention of the Supervisor.
- c. Classified Information and Trade Secrets. Any classified information and/or personal knowledge of such information by KY OSH Program personnel shall be handled in accordance with the regulations of the responsible agency. The collection of such information, and the number of exposed personnel shall be limited to the minimum necessary for the conduct of such compliance activities.

C. Advance Notice of Inspections.

1. Policy. KRS Chapter 338.991(a) and 803 KAR 2:080 contain a general prohibition against the giving of advance notice of inspections, except as authorized by the Secretary or the Secretary's designee.
 - a. KRS Chapter 338 regulates many conditions which are subject to speedy alteration and disguise by employers. To forestall such changes in worksite conditions, KRS Chapter 338.101(a) prohibits unauthorized advance notice and authorizes the KY OSH Program to enter worksites "without delay" in order to preserve the element of surprise.
 - b. There may be occasions when advance notice is necessary to conduct an effective investigation. These occasions are narrow exceptions to the statutory prohibition against advance notice.
 - c. Advance notice of inspections may be given only in the following situations:
 - (1) In cases of apparent imminent danger to enable the employer to correct the danger as quickly as possible;
 - (2) When the inspection can most effectively be conducted after regular business hours or when

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special preparations are necessary;

- (3) To ensure the presence of employer and employee representatives or other appropriate personnel who, as determined by the Program Manager, are needed to aid in the inspection; and
 - (4) When the Program Manager determines that giving advance notice would enhance the probability of an effective and thorough inspection; e.g., in complex fatality investigations.
- d. Advance notice exists whenever the Program Manager sets up a specific date or time with the employer for the CSHO to begin an inspection, or to continue an inspection that was interrupted or delayed more than 5 working days as described in C.1.d.(3). It generally does not include nonspecific indications of potential future inspections.
- (1) Although advance notice normally does not exist after the CSHO has arrived at the worksite, presented credentials and announced the inspection, many causes can serve to delay or interrupt the continued conduct of the inspection. For example, the employer representative on site may request a delay of entry pending the return of the president or some other higher ranking official, or sampling may have to be delayed for some reason for completion of the initial walkaround.
 - (a) Such delays shall be short as possible. If an employer's (or an employee representative's) request for delay appears reasonable, the CSHO may delay or interrupt the inspection for up to an hour. The supervisor shall be contacted if the delay lasts or is anticipated to last longer than one hour.
 - (b) The supervisor shall decide whether the circumstances justify a delay of more than one hour and, if so, for how long. If the delay appears reasonable, the inspection may be delayed or interrupted for the time judged necessary, but in no case for longer than 5 working days except as indicated in C.1.d.(3).
 - (c) In cases where screening sampling is performed and laboratory analysis of the samples is required, there shall be no more than 5 working days between receipt of screening results and the onset of full- shift sampling.

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- (d) The inspection shall be resumed as soon as reasonably possible. Delays or interruptions of less than 5 working days shall not require implementation of advance notice procedures.
- (2) If the employer or the employee representative requests a delay which the supervisor believes is unreasonable or without sufficient justification (e.g., too long, not in good faith) or if the delay requested is for more than 5 working days except as indicated in C.1.d.(3), the CSHO shall inform the requester that agency policy does not allow for such a delay. If the employer representative continues to insist on the delay, the situation shall be treated as a refusal of entry and shall be handled in accordance with the procedures in D.1.d.(1).
- (3) In unusual circumstances, the Program Manager may decide that a delay of more than 5 working days is necessary; e.g., the process to be sampled may not be activated within that time or compliance personnel may not be available in the Office because of higher priority demands. Any situation involving a delay of more than 5 working days, whatever the justification, shall be handled as advance notice and must be approved by the Director or Program Manager. In such cases the procedures in C.2. shall be observed in addition to the following:
 - (a) The CSHO shall determine whether employees at the worksite are represented by a labor organization or a safety committee and, if so, who the authorized representative of employees is.
 - (b) The CSHO shall notify the employee representative of the delay as promptly as possible and shall keep the representative informed of future appointments or other arrangements for resuming the inspection.
 - (c) If more than one employer is at the worksite, authorized employee representatives of all such employers shall be notified of the delay as promptly as possible and kept informed of arrangements for resuming the inspection.
 - (d) The CSHO may request the employer(s) to inform the employee representatives of

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the delay and to notify them promptly when arrangements have been made to resume the inspection.

- (e) If there is no authorized representative of employees, the procedures in C.2.h. shall be followed.

2. Procedures. In the situations described in C.1.c. and d.(3), advance notice may be given by the Supervisor only after authorization by the Director. In cases of apparent imminent danger, however, advance notice may be given by the Supervisor without such authorization if the Secretary, Director or Program Manager is not immediately available. The Director or Program Manager shall be notified as soon as possible and kept apprised of all details.

- a. If it is decided to provide advance notice, the Supervisor shall do so by telephone or other appropriate contact. This contact normally shall be made not more than 24 hours prior to the inspection. Documentation of the conditions requiring advance notice and the procedures followed shall be included in the case file.
- b. If advance notice is to be given at a construction or other multiple employer site, the Supervisor shall contact the general contractor. If there are two or more general contractors, all shall be contacted. The general contractor shall be informed of the responsibility of advising all subcontractors on the site of the inspection.
- c. During the telephone contact with the employer, the Supervisor shall identify himself/herself, explain the purpose of the inspection, state when the inspection is expected to be conducted, ascertain the employer's normal business hours and whether special protective equipment or precautions are required. If security clearances or immunizations are necessary, the Program Manager shall be notified. (See B.7. for immunization requirements and B.8. for personal security clearance.)
- d. An important purpose of advance notice is to make arrangements for the presence of employer and employee representatives to aid in the conduct of an effective and thorough inspection. A responsible management official shall be requested to assist in the inspection. The Supervisor shall advise the employer that KRS Chapter 338.111 and 803 KAR 2:110 require that an employee representative be given an opportunity to participate in the inspection.
- e. The Supervisor shall determine if employees at the

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establishment are represented by a labor organizations(s) and if there is a safety committee with employee representatives. The Supervisor shall advise the employer that, when advance notice is given, it is the employer's responsibility to notify the authorized employee representative(s) promptly of the inspection.

- f. If a general contractor is contacted, it shall be pointed out that it is that contractor's responsibility to instruct each subcontractor of the obligation to notify employee representatives promptly of the inspection.
- g. If the employer requests and furnishes the identity of the representative, the Supervisor shall promptly inform the employee representative of the inspection and shall provide any other information necessary in accordance with 803 KAR 2:080 Section 1 (2)(a).
- h. The advance notice requirement with respect to employees applies only if there is a known representative authorized by employees, such as a labor organization or a safety committee with employee representatives. If there is no authorized employee representative or if it cannot be determined with reasonable certainty who the representative is, the CSHO shall consult with a reasonable number of employees during the inspection to determine the impact or possible adverse effects of the advance notice.

D. Conduct of the Inspection.

- 1. Entry of the Workplace. The CSHO shall enter the establishment to be inspected with an attitude reflecting a professional, balanced, and thorough concern for safety and health.
 - a. Time of Inspection. Inspections shall be made during regular working hours of the establishment except when special circumstances indicate otherwise. The supervisor shall be contacted before entry during other than normal working hours.
 - b. Severe Weather Conditions. If severe weather conditions encountered during an inspection cause workplace activities to shut down, the inspection shall be continued at a later time as soon as weather permits.
- (1) If work continues during adverse weather conditions but the CSHO decides that the weather interferes with the effectiveness of the inspection, it shall be terminated and continued when conditions improve.

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- (2) If work continues and the CSHO decides to continue the inspection in spite of bad weather, hazardous conditions created by the weather shall be noted since they may be the subject of later citation.

c. Presenting Credentials. At the beginning of the inspection the CSHO shall attempt to locate the owner, operator or agent in charge at the workplace and present credentials. On construction sites this will most often be the representative of the general contractor. In the following circumstances, the CSHO shall:

- (1) Identify the top management official at the beginning of the inspection when the person in charge is not present. This person may be the foreman, leadman, gang boss or senior member of the crew.
- (2) When neither the person in charge nor a management official is present, contact the employer by telephone and request the presence of the owner, operator or management official. The inspection shall not be delayed unreasonably to await the arrival of the employer representative. This delay shall not normally exceed one hour.
- (3) If the person in charge at the workplace cannot be determined according to the circumstances in (1) and (2) above, record the extent of the inquiry in the case file and proceed with the physical inspection after contacting the supervisor. If the person in charge arrives during the inspection, an abbreviated opening conference shall be held, and the person shall be informed of the status of the inspection and included in the continued walkaround.
- (4) Reserved.
- (5) On multi-employer sites ask the superintendent, project manager or other representative of the general or prime contractor to identify the subcontractors or other contractors on the site together with the names of the individuals in charge of their operations.
 - (a) The CSHO shall then request that these individuals be contacted and asked to assemble in the general contractor's office or other suitable location, together with their employee representatives, if any.
 - (b) The inspection shall not be postponed or

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unreasonably delayed because of the unavailability of one or more representatives.

d. Refusal to Permit Inspection. KRS Chapter 338.101 provides that CSHOs may enter without delay and at reasonable times any establishment covered under the Act for the purpose of conducting an inspection. An employer has a right to require that the CSHO seek an inspection warrant prior to entering an establishment and may refuse entry without such a warrant.

(1) Refusal of Entry or Inspection. The CSHO shall not engage in argument concerning refusal. When the employer refuses to permit entry upon being presented proper credentials or allows entry but then refuses to permit or hinders the inspection in some way, a tactful attempt shall be made to obtain as much information as possible about the establishment. (See D.1.d.(5)(c)7 for the information the CSHO shall attempt to obtain.)

(a) If the employer refuses to allow an inspection of the establishment to proceed, the CSHO shall leave the premises and immediately report the refusal to the supervisor. The Program Manager shall notify the Director.

(b) If the employer raises no objection to inspection of certain portions of the workplace but objects to inspection of other portions, the CSHO shall inform the supervisor of the partial refusal. Normally, the CSHO shall continue the inspection, confining it only to those certain portions to which the employer has raised no objections.

(c) In either case the CSHO shall advise the employer that the refusal will be reported to the supervisor and that the agency may take further action, which may include obtaining legal process.

(2) Questionable Refusal. When permission to enter or inspect is not clearly given, the CSHO shall make an effort to clarify the employer's intent.

(a) If there is doubt as to whether the employer intends to permit an inspection, the CSHO shall not proceed but shall contact the supervisor immediately. When the employer's intent

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is clarified, the CSHO shall either conduct the inspection or proceed as outlined in D.1.d.(1).

- (b) When the employer hesitates or leaves for a period of time so that permission is not clearly given within one hour of initial entry, the CSHO shall contact the supervisor, who shall decide whether or not permission is being refused.

- 1 The CSHO may answer reasonable questions presented by the employer; e.g., the scope of the inspection, purpose, anticipated length.

- 2 The CSHO shall avoid giving any impression of unyielding insistence or intimidation concerning the right to inspect.

- (c) If it becomes clear that the employer is refusing permission to enter, the CSHO shall leave the establishment and contact the supervisor.

- (3) Employer Interference. Where entry has been allowed but the employer interferes with or limits any important aspect of the inspection, the CSHO shall immediately contact the supervisor for instructions on whether or not to consider this action as a refusal. Examples of interference are refusals to permit the walkaround, the examination of records essential to the inspection, the taking of essential photographs and/or videotapes, the inspection of a particular part of the premises, indispensable employee interviews, or the refusal to allow attachment of sampling devices.

- (4) Administrative Subpoena. Whenever there is a reasonable need for records, documents, testimony and/or other supporting evidence necessary for completing an inspection scheduled in accordance with any current and approved inspection scheduling system or an investigation of any matter properly falling within the statutory authority of the agency, the Secretary may issue an administrative subpoena.

- (5) Obtaining Compulsory Process. If it is determined, upon refusal of entry or refusal to produce required evidence, that a warrant will be sought, the Director shall proceed according

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to guidelines and procedures established in the State for warrant applications.

- (a) With the approval of the Secretary and the General Counsel, the Director may initiate the compulsory process.
- (b) Reserved.
- (c) If the warrant is to be obtained by the General Counsel, the Director shall transmit in writing to the General Counsel, within 48 hours after the determination is made that compulsory process (warrant) is necessary, the following information:

- 1 Name of supervisor involved.
- 2 Name of CSHO attempting inspection and inspection number, if assigned. Identify whether inspection to be conducted included safety items, health items or both.
- 3 Legal name of establishment and address including City, State and County. Include site location if different from mailing address.
- 4 Estimated number of employees at inspection site.
- 5 SIC Code and high hazard ranking for that specific industry within the State, as obtained from statistics provided by the National Office.
- 6 Summary of all facts leading to the refusal of entry or limitation of inspection, including the following:
 - a Date and time of entry.
 - b Date and time of denial.
 - c Stage of denial (entry, opening conference, walkaround, etc.).
- 7 Narrative of all actions taken by the CSHO leading up to during and after refusal including, as a minimum, the following information:
 - a Full name and title of the person to whom CSHO presented

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credentials.

- b Full name and title of person(s) who refused entry.
 - c Reasons stated for the denial by person(s) refusing entry.
 - d Response, if any, by CSHO to c above.
 - e Name and address of witnesses to denial of entry.
- 8 All previous inspection information, including copies of the previous citations.
- 9 Previous requests for warrants. Attach details, if applicable.
- 10 As much of the current inspection report as has been completed.
- 11 If a construction site involving work under contract from any agency of the Federal Government, the name of the agency, the date of the contract, and the type of work involved.
- 12 Other pertinent information such as description of the workplace; the work process; machinery, tools and materials used; known hazards and injuries associated with the specific manufacturing process or industry.
- 13 Investigative techniques which will be required during the proposed inspection; e.g., personal sampling, photographs, videotapes, examination of records, access to medical records, etc.
- 14 The specific reasons for the selection of this establishment for the inspection including proposed scope of the inspection and rationale:
 - a Imminent Danger.
 - o Description of alleged imminent danger situation.
 - o Date received and source of

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information.

- o Original allegation and copy of typed report, including basis for reasonable expectation of death or serious physical harm and immediacy of danger.
- o Whether all current imminent danger processing procedures have been strictly followed.

b Fatality/Catastrophe.

- o Type of accident-fatality, catastrophe.
- o Method of accident notification-- telephone, news media (attach copy of report), employee representative, other.
- o Number of employees involved-- fatalities, injuries, number hospitalized.

c Complaint.

- o Original complaint and copy of typed complaint.
- o Reasonable grounds for believing that a violation that threatens physical harm or imminent danger exists, including standards that could be violated if the complaint is true and accurate.
- o Whether all current complaint processing procedures have been strictly followed.
- o Additional information gathered pertaining to complaint evaluation.

d Referral.

- o Original referral and copy of completed Referral Form, KY OSH -90.
- o Specific description of the

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hazards observed and the potential injury or illness that may result from the specific hazard.

- o Specific standards that may be violated.
- o Number of employees affected by the specific hazard.
- o Corroborative information or other supporting material to demonstrate potential existence of a hazard and employee exposure, if known.
- o Whether all current referral processing procedures have been strictly followed.
- o Additional information gathered pertaining to referral evaluation.

e Programmed.

- o High hazard safety--general industry, maritime, construction.
- o Targeted health.
- o Special emphasis program--Special Programs, Local Emphasis Program, Migrant Housing Inspection, etc.

f Followup.

- o Date of initial inspection.
- o Details and reasons followup was to be conducted.
- o Copies of previous citations on the basis of which the followup was initiated.
- o Copies of settlement stipulations and final orders, if appropriate.
- o Previous history of failure to correct, if any.

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g Monitoring.

- o Date of original inspection.
- o Details and reasons monitoring inspection was to be conducted.
- o Copies of previous citations on the basis of which the monitoring inspection was initiated.
- o Extension of abatement request, if applicable.

(6) Compulsory Process. When a court order or warrant is obtained requiring an employer to allow an inspection, the CSHO is authorized to conduct the inspection in accordance with the provisions of the court order or warrant. All questions from the employer concerning reasonableness of any aspect of an inspection conducted pursuant to compulsory process shall be referred to the General Counsel.

(7) Action to be Taken Upon Receipt of Compulsory Process. The inspection will normally begin within 24 hours of receipt of compulsory process or of the date authorized by compulsory process for the initiation of the inspection.

- (a) The CSHO shall serve a copy of the compulsory process on the employer and make a separate notation as to the time, place, name and job title of the individual served.
- (b) The compulsory process may have a space for a return of service entry by the CSHO in which the exact dates of the inspection made pursuant to the compulsory process are to be entered. Upon completion of the inspection, the CSHO will complete the return of service on the original compulsory process, sign and forward it to the supervisor for appropriate action.
- (c) If physical resistance or interference by the employer is anticipated, the Director shall notify the General Counsel; appropriate action shall be determined.
- (d) Even where the walkaround is limited by a warrant or an employer's consent to

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specific conditions or practices, a subpoena for records shall be served, if necessary. The records specified in the subpoena shall include (as appropriate) injury and illness records, exposure records, the written hazards communication program, the written lockout-tagout program, and records relevant to the employer's safety and health management program, such as safety and health manuals or minutes from safety meetings.

- (e) The Secretary may issue, for each inspection, an administrative subpoena which seeks production of the above specified categories of documents. The subpoena may call for immediate production of the records with the exception of the documents relevant to the safety and health management program, for which a period of 5 working days normally shall be allowed.
 - (f) In exceptional cases, a second warrant may be sought based on the review of records or on "plain view" observations of other potential violations during a limited scope walkaround.
- (8) Refused Entry or Interference with a Compulsory Process. When an apparent refusal to permit entry or inspection is encountered upon presenting the compulsory process, the CSHO shall specifically inquire whether the employer is refusing to comply with the compulsory process.
- (a) If the employer refuses to comply or if consent is not clearly given (for example, the employer expresses an objection to the inspection), the CSHO shall not attempt to conduct the inspection but shall leave the premises and contact the supervisor concerning further action. The CSHO shall make notations (including all possible witnesses to the refusal or interference) and fully report all relevant facts.
 - (b) The Supervisor shall contact both the Director and the General Counsel, either orally or in writing, as appropriate, concerning the refusal to comply or the interference.

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- (c) The Director, jointly with the General Counsel, shall decide what further action shall be taken.
- e. Forcible Interference with Conduct of Inspection or Other Official Duties. "any employer or individual who willfully causes bodily harm to any authorized representative of the Secretary while attempting to conduct an investigation or inspection under the provisions of (KRS Chapter 338), shall, upon conviction, be punished by a fine of not more than ten thousand dollars (10,000), or by imprisonment of no more than one year or by both".
 - (1) Agency Response. Whenever a KY OSH Program official or employee encounters forcible resistance, opposition, interference, etc., or is assaulted or threatened with assault while engaged in the performance of official duties, all investigative activity shall cease.
 - (a) The supervisor shall be advised by the most expeditious means.
 - (b) Upon receiving a report of such forcible interference, the Director or designee shall immediately notify the Secretary.
 - (2) Types of Interference. Although the employer is legally entitled to refuse permission to conduct an inspection without a warrant, the Law does not permit forcible conduct against the CSHO. The following illustrates the type of forcible conduct which shall be immediately reported to the supervisor:
 - (a) Anyone physically holding, grabbing, pushing, shoving, or in any way limiting the official's or employee's freedom of action or choice of action. The threat of any action which limits freedom of action or choice of action is included.
 - (b) Anyone striking, kicking, or in any way inflicting or attempting to inflict injury, pain or shock on the official or employee. The threat of such actions is included as is oral abuse which menaces or causes concern for the official's or employee's safety.
 - (c) Anyone assaulting or threatening the official or employee with a weapon of any kind. The handling or display of weapons in a menacing manner is included.

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- f. Release for Entry. The CSHO shall not sign any form or release or agree to any waiver. This includes any employer forms concerned with trade secret information.
- (1) If the employer requires that a release be signed before entering the establishment, the CSHO shall inform the employer of the Secretary's authority under KRS Chapter 338.101(1)(a). If the employer still insists on the signing of a release, the CSHO shall suspend the inspection and report the matter promptly to the supervisor who shall decide if the situation is to be treated as a refusal of entry.
 - (2) The CSHO may sign a visitor's register, plant pass, or any other book or form used by the establishment to control the entry and movement of persons upon its premises. Such signature shall not constitute any form of a release or waiver of prosecution of liability under the Law.
 - (3) In case of any doubt, the CSHO shall consult with the supervisor before signing any document.
- g. Bankrupt or Out of Business. If the establishment scheduled for inspection is found to have ceased business and there is no known successor, the CSHO shall report the facts to the supervisor. If an employer, although adjudicated bankrupt, is continuing to operate on the date of the scheduled inspection, the inspection shall proceed. An employer must comply with the Law until the day the business actually ceases to operate.
- h. Strike or Labor Dispute.
- (1) Work Stoppage and Necessity of Inspection. No inspection activities shall be initiated either at the plant or workplace while the establishment, plant, or workplace under consideration is involved in a strike or a labor dispute involving work stoppage or picketing, without approval of the Secretary of Labor. Under some circumstances it may be appropriate to make an inspection of such establishment. Therefore, the Director of Compliance shall be advised immediately and before any inspection has begun of all such situations involving an inspection scheduled on a complaint basis or as a result of information indicating probable violations.

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- (2) Recommendation for Inspection. In compiling this information, the CSHO shall give his recommendation as to whether the scheduled inspection should be made or should be delayed until the strike, labor dispute, or picketing is concluded. Such investigation shall be made only on the specific authorization of the Secretary of Labor. The CSHO shall inform the appropriate union official of the reason for the inspection prior to initiating the inspection.
 - i. No Inspection. If a scheduled inspection cannot be conducted, the CSHO shall document the reasons for not conducting the inspection, and shall include the names of persons contacted on the KY OSH -1A form to be included in the case file.
 2. Employee Participation. CSHOs shall determine as soon as possible after arrival whether the employees at the worksite to be inspected are represented and, if so, shall ensure that employee representatives are afforded the opportunity to participate in all phases of the workplace inspection. If an employer resists or interferes with participation by employee representatives in an inspection and this cannot be resolved by the CSHO, the employer shall be informed of the right of the employee representative to participate. Continued resistance by the employer shall be construed as a refusal to permit the inspection and the supervisor shall be contacted in accordance with D.1.d.(1).
- NOTE: For the purpose of this chapter, the term "employee representative" refers to (1) a representative of the certified or recognized bargaining agent, or, if none, (2) an employee member of a safety and health committee who has been chosen by the employees (employee committee members or employees at large) as their KY OSH Program representative, or (3) an individual employee who has been selected as the walkaround representative by the employees of the establishment.
3. Opening Conference. The CSHO shall inform the employer of the purpose of the inspection and shall obtain the employer's consent to include participation of an employee representative, as defined in D.2., when appropriate. The opening conference shall be kept as brief as possible, normally not to exceed one hour. Conditions of the worksite shall be noted upon arrival as well as any changes which may occur during the opening conference. Pursuant to 803 KAR 2:110 the employer and the employee representatives shall be informed of the opportunity to participate in the physical inspection of the workplace.

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NOTE: An abbreviated opening conference shall be conducted whenever the CSHO believes that the circumstances at the worksite dictate that the walkaround begin as promptly as possible. In such cases the opening conference shall be limited to the bare essentials; namely, identification, purpose of the visit, and a request for employer and employee representatives. The other elements shall be fully addressed in the closing conference.

a. Purpose of the Inspection. The employer shall be informed as to the reason for the inspection as follows:

(1) Imminent Danger Situations. When responding to an alleged imminent danger situation, the CSHO is required to get to the location of the alleged hazard(s) as quickly as possible. Under these circumstances, an expedited opening conference shall be conducted by limiting activities to presenting credentials and explaining the nature, scope, and purpose of the inspection.

(a) Potential safety and health hazards that may be encountered during the inspection shall be identified and appropriate steps taken to provide for personal protection.

(b) The presence of employer and employee representatives shall be requested; however, the inspection shall not be unreasonably delayed to await their arrival.

(c) The employer shall be advised that, because of the abbreviated nature of the opening conference, there will be a more extensive discussion at the closing conference.

(d) Unreasonable delays shall be reported immediately to the supervisor.

(2) Fatality/Catastrophe Investigations. The employer shall be informed that an investigation will be conducted and extensive interviews with witnesses will be necessary. The purpose of an accident investigation shall be explained; namely, to determine:

(a) The cause of the accident.

(b) Whether a violation of KY OSH Program safety and health standards related to

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the accident occurred.

- (c) What effect the standard violation had on the occurrence of the accident.
 - (d) If KY OSH Program standards should be revised to correct the hazardous working condition that led to the accident.
- (3) Complaint Investigations. For a complaint investigation, the CSHO shall provide a copy of the complaint(s) to the employer and the employee representatives at the beginning of the opening conference.
 - (4) Referral Investigations. During the opening conference of a referral investigation, the CSHO shall inform the employer that the investigation is a result of a referral (e.g., from another agency, from a previous KY OSH Program inspection or in response to specific evidence of probable violations at a worksite).
 - (5) Followup Inspections. The CSHO shall explain that any item that had been previously cited will be evaluated for complete abatement of the hazard.
 - (6) Monitoring Inspections. The CSHO shall review the cited items with the employer to determine the progress of abatement and explain to the employer the reason for the monitoring visit.
 - (7) Reserved.
- b. Health Inspections. During a health inspection or, as appropriate, during a safety inspection when evaluating potential health hazard, the CSHO shall include in the opening conference the following additional procedures:
 - (1) Request process flow charts and plant layouts relevant to the inspection. If the plant layout and process flow charts are not available, sketch a plant layout as necessary during the course of the initial walkaround, identifying the operations and the relative dimensions of the work area. Distribution of major process equipment, including engineering controls in use, shall also be included on the sketch.
 - (2) Make a brief examination of all workplace records pertinent to the inspection.
 - (a) If detailed review is necessary, the

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CSHO may wish to proceed with the initial walkaround and return later to examine the records more thoroughly.

- (b) Many valuable insights can be obtained from an examination of required and other records (e.g., symptomatology which may relate to workplace exposure, frequency of injuries or illnesses, dermatitis, personal protective equipment usage, monitoring data, audiometric test results, ventilation tests, process flow charts and a list of hazardous raw, intermediate, and final product materials) to ensure a more effective inspection and such an examination shall not be omitted if it can be done.
- (c) In some plants, sampling for obvious health hazards can be initiated soon after the opening conference. Details of the walkaround can be accomplished while collecting the samples.

c. Attendance At Opening Conference. The CSHO shall conduct a joint opening conference or separate conferences as follows:

- (1) Joint Conference. Whenever practicable, a joint opening conference shall be held with the employer and the employee representatives (if there is an employee representative as defined in D.2. of this chapter).
- (2) Separate Conferences. Where either party chooses not to have a joint conference, separate conferences shall be held for the employer and the employee representatives. A written summary of each conference shall be made and attached to the case file. Where it is determined that separate conferences will unacceptably delay observation or evaluation of the workplace safety or health hazards, each conference shall be brief, and if appropriate, reconvened after the inspection of the alleged hazards.

d. Scope. The CSHO shall outline in general terms the scope of the inspection, including private employee interviews, physical inspection of the workplace and records, possible referrals, discrimination complaints, and the closing conference(s).

e. Handouts and Additional Items. During the opening conference of every inspection, the CSHO shall

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provide:

- (1) The employer representatives with copies of the KY OSH Program poster and with blank KY OSH -200 Forms, as well as other applicable laws and regulations, and informational handouts and materials. The CSHO shall also inform the employer representatives of procedures for obtaining additional copies of any materials of which the CSHO may not have a sufficient quantity on hand.
- (2) The employee representatives, upon request, applicable laws and regulations, and informational handouts and materials. The CSHO shall also inform them that additional copies and other materials can be obtained from the Kentucky Labor Cabinet when the CSHO has an insufficient number on hand. The employee representatives shall be given an opportunity to read the brief introductory material before the inspection begins.

f. Reserved.

g. Forms Completion. The CSHO shall obtain available information for the KY OSH-1 and other appropriate forms and complete applicable sections during the opening conference.

h. Employees of Other Employers. During the opening conference, the CSHO shall determine whether the employees of any other employers are working at the establishment.

- (1) If there are such employees and any questions arise as to whether their employers should be included in the inspection, the CSHO shall contact the supervisor to ascertain whether additional inspections shall be conducted and what limitations there may be to such inspection activity.
 - (a) All high hazard employers potentially present at any scheduled worksite normally shall be included within the scope of the inspection, except as indicated in (b) and (c) below. Thus, for example, all construction contractors working at a manufacturing establishment scheduled for inspection are to be included in the inspection assignment.

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- (b) When, however, the criteria given in Chapter IX, B.2.b.(1)(c), are met, a CSHO referral may be made and an inspection conducted under the guidelines outlined in Chapter IX.
 - (c) When a construction operation is too large to be efficiently handled during the inspection of the programmed manufacturing establishment, the operation shall be treated as a referral for inspection at a later time, in accordance with Chapter IX, B.
- (2) If additional inspections are authorized, both employer and employee representatives of the other employers shall be invited to the opening conference. The inspection shall not be delayed to wait for these employer or employee representatives longer than would be reasonably necessary for either to arrive.
- (3) If the site is a multi-employer site, such as, but not limited to construction, the CSHO shall determine during the opening conference who is responsible for providing common services available to all employees on site; e.g., sanitation, first aid, handrails, etc.
 - (a) It shall be pointed out to all contractors that, apart from any arrangements that may have been made, each employer remains responsible for his or her own employees.
 - (b) If it cannot be established which contractor is responsible for common services, the CSHO will determine which employer is the exposing, creating, or enforcing employer, whenever violations are noted.
- i. Voluntary Compliance Programs. Reserved.
- j. Other Opening Conference Topics. The CSHO shall determine at the beginning of the opening conference:
 - (1) Legislative Limitations. Whether or not the employer is covered by any of the exemptions or limitations noted in the current Appropriations Act or in Chapter II. (See OSHA Instruction CPL 2.51G.)
 - (2) Employer Name. What the correct legal name of

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the employer is, what type of legal entity is it, and whether it is a subsidiary of any other business entity.

- (3) Coverage. What facts show that the employer is covered under the Law; i.e., that the employees are not employees of the United States Government and that they are not employers, employees or places of employment over which federal agencies other than the Occupational Safety and Health Administration of the United States Department of Labor exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.
- (4) Trade Secrets. Whether the employer wishes to identify areas in the establishment which contain or might reveal trade secrets. If trade secrets are identified, the CSHO will explain that KY OSH Program is required by law to preserve the confidentiality of all information which might reveal a trade secret in accordance with 803 KAR 2:095. (See D.8.e.(1) for further instructions.)
- (5) Photographs and Videotapes. Whether the employer has any objection to taking photographs and/or videotapes as permitted by 803 KAR 2:070. If the employer does object, the CSHO shall immediately notify the supervisor in accordance with D.1.d.(3).
- (6) Potential Hazards. Whether there are any safety and health hazards to which the walkaround party may be exposed during the inspection. The CSHO shall ensure that all members of the inspection party are advised as to appropriate personal protective equipment that is required based on this information.

4. Records Review. Reserved.

- (4) Injury and Illness Records Review. Review the KY OSH-200 logs and record in the narrative section of the case file the number of LWDIs that occurred in each of the reference years. (LWDIs are defined as injuries involving days away from work and/or days of restricted work activity--Column 2 of the KY OSH-200.) As usual, record KY OSH-200 data on the KY OSH-1 for the most recent full calendar year.
 - (a) Illnesses. Although cases of illness

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will not be used in calculating the LWDI rate, the CSHO conducting a safety inspection shall make note of any significant recorded illnesses and submit a health referral if appropriate. The employer and the employee representatives shall be advised of the possibility of a referral health inspection.

- (b) Verification of Records. The CSHO shall verify the accuracy of the KY OSH-200 logs by carefully checking them against workers' compensation first reports of injury or KY OSH-101s and first aid records, when such first aid records are no more detailed than the type of information contained in the KY OSH-101. It may also be appropriate to check KY OSH-200 logs against more detailed first aid and medical records located at the establishment or at other locations.

NOTE: Access to the more detailed first aid and/or medical records may require a written medical access order or the express consent of each employee with a medical record. (See Chapter 16). Such records may be sought in cases where there is evidence of widespread recordkeeping violations.

- 1 These documents must be examined carefully to ensure that all work-related injuries and illnesses are being properly recorded on the KY OSH-200.

- a If time allows, all workers' compensation first reports of injury or the KY OSH-101s and first aid records shall be reviewed to determine if:

- o Treatment was given that could qualify as medical treatment;
- o There were any lost time injuries or injuries that resulted

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in restricted work activities or transfer to another job;

- o Any injuries resulted in loss of consciousness;
- o Any illnesses were diagnosed; or
- o Anything else that would indicate that a recordable injury or illness occurred.

b If all reports cannot be examined, a representative sample shall be extracted for closer review as indicated in the preceding subsection.

c If any cases noted under a are found, the KY OSH-200 shall be checked to ensure that they have been properly recorded.

2 The company representative responsible for maintaining injury and illness records shall be interviewed to determine what the company's recording policy is. This individual shall be identified in the case file.

3 Injury and illness records shall be reviewed and verified with employee representatives or other informed employees.

4 If the verification process indicates that the KY OSH-200 does not accurately reflect the lost workday injury experience at the establishment or that the employer is not properly recording injuries or illnesses, this shall be documented in the case file. The CSHO shall advise the employer of the problem and proceed with the inspection.

5 Reserved.

(5) Calculation of the LWDI Rate. Reserved.

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5. Walkaround Representatives. Those representatives designated to accompany the CSHO during the walkaround are considered walkaround representatives.

a. Employer Representatives. Anyone designated by the employer as a representative is acceptable. In cases of isolated or remote locations, the senior supervisor, foreman, gang boss or head technician on site at the time of inspection is the employer representative. Subject to the guidelines given in D.6.e., every reasonable effort shall be made to afford general walkaround rights to every employer representative on a multi-employer worksite.

b. Employee Representatives. Subject to the guidelines in D.6.e., one or more employee representatives shall be given an opportunity to accompany the CSHO during the walkaround phase of the inspection, to provide appropriate involvement of employees in the physical inspection of their own places of employment, and to give them an opportunity to point out hazardous conditions. 803 KAR 2:110 gives the CSHO authority to resolve disputes as to who represents the employees for walkaround purposes. The following guidelines shall be utilized for determining employee representatives:

(1) Employees Represented by a Certified or Recognized Bargaining Agent. During the opening conference, the highest ranking union official or union employee representative shall designate who will participate in the walkaround.

(2) Safety Committee. The employee members of an established plant safety committee or the employees at large may have designated an employee representative for KY OSH Program inspection purposes or agreed to accept as their representative the employee designated by the committee to accompany the CSHO during an KY OSH Program inspection.

(3) No Certified or Recognized Bargaining Agent. Where employees are not represented by an authorized representative, where there is no established safety committee, or where employees have not chosen or agreed to an employee representative for KY OSH Program inspection purposes whether or not there is a safety committee, the CSHO shall determine if any other employees would suitably represent the interests of employees on the walkaround.

(a) If selection of such employee representatives is impractical, the

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inspection shall be conducted without an accompanying employee representative; and the CSHO shall consult with a reasonable number of employees during the walkaround in accordance with the provisions of 803 KAR 2:110 and KRS Chapter 338.110 of the law.

- (b) Employees selected for interviewing shall include individuals judged knowledgeable about the area or process being inspected.

6. Special Situations.

- a. Preemption by Another Agency. KRS Chapter 338.012(1)(a) states that the KY OSH Program Law does not apply to working conditions over which other Federal agencies exercise statutory responsibility. The determination of preemption by another Federal agency is, in many cases, a highly complex matter. To preclude as much as possible any misunderstanding with other agencies and to avoid consequent adverse actions by employers (or agencies) the CSHO shall contact the supervisor who in turn will contact the Director of Compliance.
- b. Labor Relations Disputes. The CSHO shall not become involved in labor relations disputes either between a recognized union and the employer or between two or more unions competing for bargaining rights. However, if there is a recognized union, the highest ranking official available will designate the authorized walkaround representative even though another union may be seeking recognition.
- c. Expired Collective Bargaining Agreement. When a union contract has expired, the CSHO shall assume that the incumbent union remains as the bargaining agent unless that union is decertified, officially replaced, or has abandoned bargaining agent status.
- d. Employee Representatives Not Employees of the Employer. Walkaround representatives authorized by employees will usually be employees of the employer. If, however, a non-employee (union official, industrial hygienist, safety engineer, or other experienced safety or health person) is designated by the employees as their representative to accompany the CSHO during the inspection, such a person normally shall be accorded walkaround rights consistent with 803 KAR 2:110. Questionable circumstances, including delays of more than one hour, shall be referred to the supervisor. A non-employee representative shall be cautioned by the CSHO not to discuss matters pertaining to operations of the employer during the

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inspection.

- e. More Than One Representative. At establishments where more than one employer is present or in situations where groups of employees have different representatives, it is acceptable to have a different employer/employee representative for different phases of the inspection. More than one employer and/or employee representative may accompany the CSHO throughout or during any phase of an inspection if the CSHO determines that such additional representatives will aid and not interfere with the inspection 803 KAR 2:110.
 - (1) Whenever appropriate to avoid a large group, the CSHO shall encourage multiple employers to agree upon and choose a limited number of representatives for walkaround accompaniment purposes. If necessary, during the inspection, employer representatives not on the walkaround shall be contacted to participate in particular phases of the inspection.
 - (2) As an alternative, the CSHO shall divide a multi-employer inspection into separate phases; e.g., excavation, steel erection, mechanical, electrical, etc., and encourage different employer representatives to participate in different phases, as appropriate.
 - (3) The same principles shall govern the selection of employee representatives when several are involved.
- f. Disruptive Conduct. The CSHO may deny the right of accompaniment to any person whose conduct interferes with a full and orderly inspection (803 KAR 2:110). If disruption or interference occurs, the CSHO shall use professional judgment as to whether to suspend the walkaround or take other action. The supervisor shall be consulted if the walkaround is suspended. The employee representative shall be advised that during the inspection matters unrelated to the inspection shall not be discussed with employees.
- g. Trade Secrets. The CSHO shall ascertain from the employer if the employee representative is authorized to enter any trade secret area(s). If not, the CSHO shall consult with a reasonable number of employees who work in the area (803 KAR 2:095).
- h. Classified Areas. In areas containing information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a

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CSHO (803 KAR 2:110). The CSHO must also have the proper security clearances to enter these areas.

- i. Apparent Violations Observed Prior to the Walkaround. When an apparent violation is observed by the CSHO prior to the walkaround, it shall be noted. All such apparent violations shall be rechecked during the walkaround and cited if appropriate. When possible, serious violations shall be rechecked and documented immediately at the commencement of the walkaround.

- j. Use of Tape Recorders. The use of tape recorders during the required conferences may inhibit the free exchange of information, and care shall be exercised in their use. Tape recorders may be used by the CSHO only after authorization by the supervisor.

- (1) The use of tape recorders may be authorized whenever circumstances justify it, such as where there is conflicting evidence indicating that the preservation of statements is advisable or where securing signed statements from affected employees will delay the expeditious completion of the investigation.

- (2) The tape recorder shall not be used in locations where it may be hazardous.

- (3) If the employer, employer representative, affected employees, or any other witnesses object to recording their statements during any part of the investigation, the inspection shall be continued without the tape recorder.

7. Examination of Record Programs and Posting Requirements.

- a. Records. As appropriate, the CSHO shall comply with the records review procedures that follow, and document the findings in the case file.

- (1) Injury and Illness Records. At the time of the inspection, all injury and illness records required by 803 KAR 2:080 shall be examined. If the records have been examined during the current calendar year by a CSHO of the same discipline, the CSHO need only review the injury and illness records since the last inspection. The KY OSH-200 data need not be entered on the KY OSH-1, unless:

- (a) The KY OSH-200 data was not available at the time of the last inspection, but has now become available; or

- (b) The calendar year has changed since the last inspection and new KY OSH-200 data

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is available.

NOTE: The CSHO shall not request access to the Bureau of Labor Statistics survey questionnaire (OSHA-200S) or even ask if the employer has participated in the survey program.

- (2) Access to Employee Exposure and Medical Records. During all health inspections and safety inspections when designated by the supervisor, whatever the LWDI rate, the CSHO shall determine if applicable exposure and medical records are being maintained in accordance with the medical surveillance recordkeeping requirements of applicable standards or of 29 CFR 1910.20. CSHO access to the employee medical records is authorized for the limited purpose of verifying the existence of required records. Review of the content of such medical records may require a written access order or express employee consent. (See Chapter 16).
- (3) Hazard Communication. The CSHO shall determine if the employer is covered by the hazard communication standard. If so, the CSHO shall ensure that the applicable requirements have been met and the program is effective. (See OSHA Instruction CPL 2-2.38C.) Citations for violations of the standard shall be issued in accordance with the provisions of Chapter IV, C. and Chapter V, C. To ensure that the employer has an effective hazard communication program, the following shall be performed:
- (a) The CSHO shall confirm his/her analysis regarding recordkeeping and training by conducting employee interviews and documenting their responses in the case file.
 - (b) The CSHO shall conduct a brief tour of the facility to confirm compliance with the following elements of the hazard communication standard:
 - 1 The existence of a written hazard communication program.
 - 2 The required list of hazardous chemicals.
 - 3 The existence of and reliance upon hazard determination procedures.

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- 4 The existence and availability of material safety data sheets in the work area.
- 5 Inplant and shipped container labeling programs.
- 6 The effectiveness of required training.
- (4) Lockout/Tagout. Evaluations of compliance with lockout/tagout standards shall be conducted during all general industry inspections within the scope of the standard. The review of records shall include special attention to injuries related to maintenance and servicing operations. (See OSHA Instruction STD 1-7.3.)
- (5) Other Records. Any other records which fall within the scope of the inspection and which are related directly to the purpose of the inspection (803 KAR 2:070) shall be examined. These may include, but are not limited to:
- (a) Required certification records properly completed and any available equipment inspection and maintenance records;
- (b) Medical surveillance or monitoring records, employee exposure records and other medical records not covered under the hazard communication standard. (See D.7.a.(3).)

NOTE: Whenever circumstances indicate or whenever assigned by their supervisors, adequately cross-trained CSHOs conducting a safety inspection shall also conduct a survey of records required by various health standards to be maintained by the employer. These required records may be evaluated by the CSHO at the site or may be copied for examination by the health staff.

- (c) Safety committee minutes; checklists; records of inspections conducted by plant safety and health committees, insurance companies, or consultants; if voluntarily supplied by the employer.
- (d) Variance documentation.
- b. Posting. The CSHO shall determine if posting requirements are met in accordance with 803 KAR 2:125.

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803 KAR 2:060 and 803 KAR 2:180 these include, but are not limited to:

- (1) KY OSH Program poster informing employees of their rights and obligations under the Law.
- (2) Log and Summary of Occupational Injuries and Illnesses during the month of February.
- (3) Current citations, if any.

c. Additional Information. It is KY OSH Program policy that all safety and health inspections include an entry into and survey of the workplace. Physical inspection of the workplace offers the opportunity not only to identify hazards, but also to verify the effectiveness of safety and health programs.

- (1) Accordingly, for all safety and health inspections, the CSHO shall review the employer's overall safety and health management program and specific programs such as those related to personal protective equipment and respiratory protection to evaluate their effectiveness and identify deficiencies.
- (2) This review shall include a brief survey of the workplace, focusing on any high hazard areas.
- (3) A partial inspection may be expanded, in consultation with the supervisor based on the following factors:
 - (a) Lack of comprehensive safety and health management program. (See D.8.a.(2) and Chapter III Appendix, "Narrative," B.18.)
 - (b) Significant deficiencies in critical programs such as respiratory protection programs, hazard communication, lockout/tagout, wire rope inspection for cranes, or fire protection programs.
 - (c) Moderate to high gravity serious violations of safety and health standards uncovered during the plant tour.
 - (d) Concentrations of injuries or illnesses in specific areas of the plant.
 - (e) Has a high injury and illness rate relative to their industry (SIC).
- (4) If it is determined to expand the inspection,

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the employer shall be immediately so notified.

- (5) Observed violations shall be documented and cited appropriately.

8. Walkaround Inspection. The main purpose of the walkaround is to identify potential safety and/or health hazards in the workplace. The CSHO shall conduct the inspection in such a manner as to eliminate unnecessary personal exposure to hazards and to minimize unavoidable personal exposure to the extent possible.

a. General Procedures. It is essential during the walkaround portion of every inspection for the CSHO to:

- (1) Become familiar with plant processes, collect information on hazards, observe employees' activities and interview them as appropriate.

- (a) For health inspections, a preliminary tour of the establishment normally shall be accomplished before any decision to conduct an in-depth industrial hygiene investigation.

- (b) Such a preliminary walkaround shall survey existing engineering controls and collect screening samples, when appropriate, to determine the need for full-scale sampling.

- 1 If screening reveals potentially high exposure levels, a comprehensive health inspection shall be conducted.

- 2 If screening samples must be sent to the laboratory for analysis, the employer shall be so informed.

- a If the laboratory results show that potentially high employee exposure levels exist, full-scale sampling of the potentially hazardous areas will be conducted.

- b If the results are negative, the file will be closed.

- (2) Evaluate the employer's safety and health program (whether written or not) as follows:

- (a) By ascertaining the degree to which the employer is aware of potential hazards present in the workplace and the methods

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in use to control them:

- 1 What plans and schedules does the employer have to institute, upgrade and maintain engineering and administrative controls?
- 2 What is the employer's work practices program?

(b) By determining employee knowledge of any hazards which exist in the establishment; the extent to which the employer's program covers the precautions to be taken by employees actually or potentially exposed to plant hazards; emergency procedures and inspection schedules for emergency personal protective equipment; the program for the selection, use and maintenance of routine personal protective equipment; and overall quality and extent of the educational and training program and the degree of employee participation in it.

- 1 Compliance with the training requirements of any applicable safety and/or health standard shall be determined.
- 2 The following specific elements of the establishment safety and health program shall be evaluated in the detail appropriate to the circumstances of the inspection:

a Comprehensiveness. Evaluate the degree to which the employer's safety and health program addresses the full range of hazards normally encountered in the employers operations. This is an overall evaluation and shall take into account the evaluations of the remaining categories. Indicate whether the program is written.

b Communication. Evaluate the employees' awareness of the access to the safety and health program, taking into account the principal means by which the program is communicated to them (e.g., oral instructions,

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booklets, memorandums, posters, etc.). Consider whether safety meetings are held by the employer, their frequency and the persons conducting them (e.g., crew foremen, intermediate level supervisors, safety director, etc.). The effectiveness of these means shall be considered in the evaluation.

c Enforcement. Evaluate the degree to which safety and health rules are actually enforced, taking into account the principal methods used (e.g., warnings, written reprimands, disciplinary action, discharge, etc.) and the effectiveness of these methods. Determine whether there is a staff (or one specific person) with assigned safety or health responsibilities and consider the effectiveness of the staff's performance.

d Safety/Health Training Program. Evaluate separately any safety and health training programs the employer has. Factors to be considered include the need for special training in view of the hazards likely to be encountered or of specific requirements for such training and the need for ongoing or periodic training or retraining of employees.

e Investigations. Evaluate the employer's efforts to make accident/injury/illness investigations and investigations and indicate whether adequate corrective and preventive actions are taken as a result.

- (3) Determine compliance with specific performance standards that require emphases such as hazard communication and lockout/tagout.
- (4) Identify locations and conditions that received citations during a previous inspection and include follow-up or monitoring activities as part of the walkaround to ensure proper abatement or to determine abatement progress, if the citations are a final, unstayed order of

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the Review Commission. Follow-up and monitoring activities do not constitute a separate inspection when they are conducted as part of another investigation. No separate KY OSH-1 should be submitted.

- (a) Record all facts pertinent to an apparent failure to abate, repeated or willful violation on the appropriate compliance worksheets, as described in D.8.a.(5).
 - (b) Determine if a letter of abatement previously received from the employer accurately described the correction of a previously cited violation.
 - (c) Apparent violations shall be brought to the attention of employer and employee representatives at the time they are documented.
- (5) Record all facts pertinent to an apparent violation on the appropriate compliance worksheets. Apparent violations shall be brought to the attention of employer and employee representatives at the time they are documented.
- (a) All notes, observations, analyses, and other information shall be either recorded on the worksheet or attached to it.
 - 1 Because this documentation is required for each instance of an alleged violation, the CSHO shall normally use one worksheet to describe each instance as it is noted.
 - 2 If identical violations of the same standard or of several related standards are noted in one general location in the establishment and if the documentation is essentially the same, all of those violations may be treated as a single instance description and only one worksheet need be completed for that instance.
 - 3 Photographs, videotapes, sketches, and descriptions that are attached to the worksheet are part of the inspection record and shall be noted on the form. The original field

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notes, as a basic documentation of the violation, shall be attached to the worksheet and retained in the case file. .

- (b) The CSHO shall provide as much detailed information as practical to establish the specific characteristics of each violation as follows:

1 Describe the observed hazardous conditions or practices (i.e., the facts which constitute a hazardous condition, operation or practice and the essential facts as to how and/or why a standard is allegedly violated). Specifically identify the hazards to which employees have been or could be exposed. Describe the type of accident which the violated standard was designed to prevent in this situation, or note the name and exposure level of any contaminant or harmful physical agent to which employees are, have been or could be exposed. If more than one type of accident or exposure could reasonably be predicted to occur, describe the one which would result in the most serious injury or illness. for the type of accident described, include:

a All factors about the violative condition which could significantly affect the nature and severity of the resulting injuries, (e.g., "fall of 20 feet onto protruding rebar"; "fall into water-filled excavation").

b Other factors which could affect the probability that an injury would occur, such as:

o Proximity of the workers to the point of danger of the operation.

o Stress producing characteristics of the operation (e.g., speed, heat, repetitiveness, noise, position of employee).

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- c For contaminants and physical agents, any additional facts which clarify the nature of employee exposure.
- d The identification of the equipment and process which pose the hazards, i.e., serial numbers, equipment types, trade names, manufacturers, and etc. Include a sketch when appropriate.
- e The specific location of the violation:
 - o Building No. 3, second floor, column no. 6.
 - o Machine Shop, N.E. corner, Department 12.
 - o Foundry, N.W. corner, shakeout area.
- f State the nature of the more serious types of injury or illness which it is reasonably predictable and could result from the accident or health exposure.
 - o Thus, the entry for the "fall from 20 feet onto protruding rebar" might read "death from multiple injuries." For exposure to asbestos, the entry might read "asbestosis, cancer and death."
 - o Broad categories of injuries and health effects (such as "electric shock," "burns," or "lacerations") shall be qualified to indicate whether the injuries or health effects are major or minor.
 - o In identifying the illnesses which a standard regulating exposure to an air contaminant or harmful physical agent is designed to prevent in a particular worksite, it may be necessary to consider not only the level of exposure but also

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the frequency and duration of exposure to the contaminant or agent.

- g Any specific measurements taken during the inspection (e.g., "20 ft. distance from top of scaffold platform to ground level"; "employee standing 2 ft. from unguarded floor edge"; "employee seated 2 ft. from source of metal fumes") which will further document the nature of the hazardous conditions and operations.
 - o Describe how measurements were taken during the inspection.
 - o Identify the measuring techniques and equipment used and those who were present; i.e., employee or employer representative who observed the measurements being taken.
 - o Include calibration dates and description of calibration procedures used, if appropriate.
- h Exposure facts so as to present a picture of employee exposure to the hazard for each particular occupation, including:
 - o The occupation and the employer of the exposed employees if the employer is different from the one on the corresponding Ky-OSH Program-1.
 - o The number of exposed employees in that occupation.
 - o The length of time that the alleged violation has existed.
 - o The duration and frequency that the employees are exposed (e.g., 2 hrs./wk.).
 - o The name, address (with zip code) and telephone number of at least one exposed employee in each occupation. If necessary, signed and dated witness

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statements shall be obtained and attached to the worksheet.

EXAMPLE: A radial arm saw has been on a construction site for 3 months and has never been guarded during that time. All of the employer's 14 carpenters on the job use the saw. One of the carpenters is John Doe. Total use of the saw on a daily basis is approximately 4 hours.

i Any facts which establish that the employer knew of the hazardous condition or could have known of that condition with the exercise of reasonable diligence. Enter any facts which show that:

- o The employer actually knew of the hazardous condition which constitutes the violation. In this regard, a supervisor represents the employer and supervisory knowledge amounts to employer knowledge. The employer could have known of the hazardous condition if all reasonable steps had been taken to identify hazards to which employees may have been exposed.

NOTE: If the CSHO has reason to believe that the violation may be a willful violation, facts shall be included to show that the employer knew that the condition existed and, in addition, knew that, by law, he had to do something to abate the hazard (e.g., the employer was previously cited for the same condition; a CSHO has already told the employer about the requirement; knowledge of the requirement was brought to the employer's attention by an employee safety committee, and etc.). Also, include facts showing that, even if he was not consciously violating the Act, the employer was aware that the violative condition existed

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and made no reasonable effort to eliminate it.

- i Any pertinent employer or employee remarks made during the walkaround and/or the closing conference, especially comments directly related to the instance described.
 - o Include employer comments which may be characterized as admissions of the specific violations described.
 - o Include any other facts which may assist in evaluating the situation or in reconstructing the total picture in preparation for testimony in possible legal actions.
 - o Include any additional comments (by the CSHO), particularly any explanation of abatement of dates when necessary (e.g., when longer than 5 days for a serious violation or when an abatement period exceeding 30 days is recommended for an item).
- 2 If employee exposure (either to safety or health hazards) is not observed, state facts on which the determination is made that an employee has been or could be exposed. In appropriate cases, state what the employer could have or should have done to be in compliance. When violations are grouped, describe the reason for grouping. If a specific type of hazard exposure is caused by the combination of violations, describe it in sufficient detail.
- 3 If the exposing employer neither created nor controlled the violative condition, state the name and relationship of the responsible party; e.g., prime contractor, electrical subcontractor, building owner or equipment lessor. Describe any steps taken by the exposing employer to have the condition corrected as described under Multi-employer Worksites, Legitimate Defense, Chapter V, F.2.

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- b. Health Inspections. There are special documentation requirements for health inspections. (See Appendix, Narrative, Ky-OSH-1A Form, Industrial Hygiene Inspection Outline.) During such inspections, the CSHO shall:
- (1) Record all relevant information concerning potential exposure to chemical substances or physical hazards such as symptomatology, duration and frequency of the hazard, pertinent employee comments, sources of potential health hazards, locations of employees pertinent to the inspection, types of engineering controls, use of personal protective devices including respirators, ear and eye protection, clothing, etc.; and collect Material Safety Data Sheets where available and appropriate.
 - (2) Observe employee activities throughout the establishment, concentrating particularly on potentially hazardous areas, and
 - (a) Estimate number of employees at each operation to be evaluated, indicating whether they are engaged in stationary or transient activities.
 - (b) Interview employees.
 - (c) Record the duration and frequency of cyclic work processes, describing potential exposures during each phase of the cycle.
 - (3) Request and evaluate information on the following aspects of the employer's occupational safety and health program (findings shall be discussed in detail at the closing conference):
 - (a) Monitoring. The employer's program for monitoring safety and health hazards in the establishment should include a program for self-inspection. The CSHO shall discuss the employer's maintenance schedules and inspection records. Additional information shall be obtained concerning such employer activities as sampling and calibration procedures, ventilation measurements, preventive maintenance programs for engineering controls, laboratory services, use of industrial hygienists and accredited laboratories. Compliance with the monitoring requirement of any applicable standard shall be determined.
 - (b) Medical. The CSHO shall determine whether the employer provides the employees with replacement and periodic medical

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examinations. The medical examination protocol shall be requested to determine the extent of the medical examinations and, if applicable, compliance with the medical surveillance requirements of any applicable standard.

- (c) Recordkeeping. The CSHO shall determine the extent of the employer's recordkeeping program. This is not to be limited to Ky-OSH Program required records, but shall be extended to information pertinent to the inspection such as:

- 1 If records pertaining to employee exposure and medical records are being preserved in accordance with 29 CFR 1910.20, and
- 2 Where a specific standard has provisions for employee access to the records, whether the results of environmental measurements and medical examinations are accessible to the affected employees.

- (d) Compliance. The employer's compliance program may include engineering, work practice and administrative controls and the use of personal protective equipment. The CSHO shall identify as follows:

- 1 Engineering Controls. Pertinent engineering controls consist of substitution, isolation, ventilation and equipment modification.
- 2 Work Practice and Administrative Controls. These control techniques include personal hygiene, housekeeping practices and rotation of employees.
 - a There should be a program of employee training and education to utilize work practice controls effectively. Where pertinent, the CSHO shall obtain a detailed description of such controls.
 - b The CSHO shall evaluate the overall effect of such practices and programs, considering the employees' knowledge of their exposures.
 - c Rotation of employees as an administrative control requires

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employer knowledge of the extent and duration of exposure.

- 3 Personal Protective Equipment. An effective personal protective equipment program should exist in the plant. A detailed evaluation of the program shall be made to determine compliance with the specific standards which require the use of protective equipment (e.g., 29 CFR 1910.95, 1910.132, 1910.134).

- (e) Regulated Areas. The CSHO shall investigate compliance with the requirements for regulated areas as specified by certain standards.

- 1 Regulated areas must be clearly identified and known to all appropriate employees.
- 2 The regulated area designations must be maintained according to the prescribed criteria of the applicable standard.

- (f) Emergency Procedures. The CSHO shall evaluate the employer's emergency program.

- 1 When standards provide that specific emergency procedures be developed where certain hazardous substances are handled, the evaluation shall determine if:

- a Potential emergency conditions are included in the written plan.

- b Emergency conditions have been explained to employees.

- c There is a training scheme for the protection of affected employees including use and maintenance of personal protective equipment.

- 2 Where hazardous substances are handled for which there are not standards requiring emergency procedures, the CSHO shall, nevertheless, determine if such procedures have been established. (See OSHA Instruction CPL 2-2.45.)

- (4) Collecting Samples. The CSHO shall determine as soon as possible after the start of the inspection whether sampling is required by utilizing the

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information collected during the walkaround and from the preinspection review.

- (a) If sampling is necessary, a sampling strategy shall be developed by considering potential chemical and physical hazards, number of samples to be taken, and the operations and locations to be sampled.

- 1 There shall be no undue delay between development of the sampling strategy and the actual sampling or between receipt of the results of spot or screen sampling and full-shift sampling, when the results indicate its necessity. (See C.1.d.) 2 If a delay of more than 5 working days is unavoidable, the reasons for the delay shall be included in the case file, Such situations shall be handled in accordance with C.1.d.(3).

- (b) When work schedules other than the usual 8-hour day are encountered, such as four 10-hour days per week, the following procedures shall be used when the standard itself does not cover such exposures:

- 1 Sampling for 8-hour exposure levels shall be performed as usual; separate sampling shall be conducted to determine any additional exposure beyond the 8 hours.

- 2 The results from the 8-hour sampling shall be compared to the Permissible Exposure Level (PEL) to determine whether or not an overexposure exists.

- 3 If it appears that the 8-hour exposure limits do not provide adequate protection from health hazards when longer workday schedules are used, the Supervisor shall contact the Program Manager for additional instructions on further sampling that may be indicated as well as for guidance on evaluation of sampling data.

- 4 The Program Manager, in such cases, may contact the Federal ARA for Technicalsupport for assistance in determining appropriate sampling procedures and in evaluating the resulting data.

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- (c) If either the employer or the employee representative requests sampling results, summaries of the results shall be provided to the requesting representative as soon as practicable after consultation with the supervisor.
- c. Taking Photographs and/or Videotapes. Photographs and/or videotapes shall be taken whenever the CSHO judges there is a need. Developed photographs shall be properly labeled and placed in the case file. Videotapes shall be properly labeled and stored.
 - (1) Do not use videotaping or flash equipment in hazardous atmospheres.
 - (2) Ensure that flash equipment does not unexpectedly startle employees.
 - (3) Any individual whose words may be recorded shall be advised of the fact that videotape recordings also capture sound.
- d. Interviews. A free and open exchange of information between the CSHO and employees is essential to an effective inspection. Interviews provide an opportunity for employees or other individuals to point out hazardous conditions and, in general, to provide assistance as to what violations of the Law may exist and what abatement action should be taken.
 - (1) Purpose. 803 KAR 2:070 authorizes the CSHO to question any employee privately during regular working hours in the course of an Ky-OSH Program inspection. The purpose of such interviews is to obtain whatever information the CSHO deems necessary or useful in carrying out the inspection effectively. Such interviews, however, shall be conducted within reasonable limits and in a reasonable manner and shall be kept as brief as possible. Individual interviews are authorized even when there is an employee representative.
 - (2) Employee Right of Complaint. Even when employees are represented on the walkaround, the CSHO may consult with any employee who desires to discuss a possible violation. Upon receipt of such information, the CSHO shall investigate the alleged violation, where possible, and record the findings.
 - (a) 803 KAR 2:090 affords any employee an opportunity to bring any condition believed to violate a standard or KRS Chapter 338.031 (1)(a) to the attention of the CSHO during an inspection.

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- (b) In certain instances, the employer and/or the employee walkaround representative may not be able to provide all the necessary information regarding an accident or possible violation. The CSHO shall consult with employees while conducting the walkaround inspection and shall arrange for interviews, where these are considered useful, with employees who may have knowledge of pertinent facts.
- (3) Time and Location. Interviews normally will be conducted during the walkaround; however, they may be conducted at any time during an inspection.
 - (a) Workplace. If requested by the employee and considered useful by the CSHO, additional consultation shall be scheduled at a mutually convenient time. In retail or service establishments or in continuous production operations (e.g., assembly line), interviews shall be scheduled to afford minimum interference with the employee's duties and the employer's business operations.
 - (b) Other Than Workplace. Interviews may be held at the employee's home, the Ky-OSH Program Office, or at any other suitable place in the community where privacy can be maintained.
- (4) Privacy. At the time of the interview, employees shall be informed that the interview is to be in private. Whenever an employee expresses a preference that an employee representative be present for the interview, the CSHO shall make a reasonable effort to honor that request. Any employer objection to private interviews with employees shall be construed as a refusal of entry and handled in accordance with the procedures in D.1.d.(1).
- (5) Interview Statements. Interview statements shall be obtained whenever the CSHO determines that such statements would be useful in documenting adequately an apparent violation.
 - (a) Interviews shall normally be reduced to writing, and the individual shall be encouraged to sign and date the statement. The CSHO shall assure the individual that the statement will be held confidential to the extent allowed by law. Following are some examples of situations where the CSHO shall normally obtain written statements:

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- 1 When there is an actual or potential controversy between the employer and employee as to a material fact concerning a violation.
- 2 When there is a conflict or difference among employee statements as to the facts.
- 3 When there is a potential willful or repeated violation.
- 4 In accident investigations, when attempting to determine if apparent violation(s) existed at the time of the accident.

(b) Interview statements shall normally be written in the first person and in the language of the individual. The wording of the statement shall be understandable to the individual and reflect only what has been brought out in the interview.

- 1 Any changes or corrections shall be initialed by the individual; otherwise, the statement shall not be changed, added to or altered in any way.
- 2 The statements shall end with wording such as: "I have read the above, and it is true to the best of my knowledge." The statement shall also include the following: "I request that my statement be held confidential to the extent allowed by law." The individual, however, may waive confidentiality. The individual shall sign and date the statement and the CSHO shall then sign it as a witness.
- 3 If the individual refuses to sign the statement, the CSHO shall note such refusal on the statement. The statement shall, nevertheless, be read to the individual and an attempt made to obtain agreement. A note that this was done shall be entered into the case file.

(c) A transcription of a recorded statement shall be made if necessary; the transcription shall meet the requirements of D.8.d.(5)(a) and (b).

e. Special Circumstances.

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- (1) Trade Secrets. Trade secrets are matters that are not of public or general knowledge. A trade secret is any confidential formula, pattern, process, equipment, list, blueprint, device or compilation of information used in the employer's business which gives an advantage over competitors who do not know or use it.
- (a) Policy. It is essential to the effective enforcement of the Law that the CSHO and all Ky-OSH Program personnel preserve the confidentiality of all information and investigations which might reveal a trade secret.
- (b) Restrictions and Controls. When the employer identifies an operation or condition as a trade secret, it shall be treated as such. Information obtained in such areas, including all negatives, photographs, videotapes, and Ky-OSH Program documentation forms, shall be labeled:

"ADMINISTRATIVELY CONTROLLED
INFORMATION"

"RESTRICTED TRADE INFORMATION"

- 1 Under KRS Chapter 338.171, all information reported to or obtained by a CSHO in connection with any inspection or other activity which contains or which might reveal a trade secret shall be kept confidential. Such information shall not be disclosed except to other Ky-OSH Program officials concerned with the enforcement of the Law or, when relevant, in any proceeding under the Law.
- 2 Reserved.
- 3 Trade secret materials shall not be labeled as "Top Secret," "Secret," or "Confidential," nor shall these security classification designations be used in conjunction with other words unless the trade secrets are also classified by an agency of the U.S. Government in the interest of national security.

- (c) Photographs and Videotapes. If the employer objects to the taking of photographs and/or videotapes because trade

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secrets would or may be disclosed, the CSHO should advise the employer of the protection against such disclosure afforded by KRS Chapter 338.171 and 803 KAR 2:095. If the employer still objects, the CSHO shall contact the supervisor.

- (2) Areas Requiring Immunization. If, during an inspection, a non-immunized CSHO encounters an area requiring immunization, the CSHO shall not enter that area but shall note a description of the area, immunization required, employees exposed, location and other pertinent information in the case file.

(a) Nonimmunized CSHO. The CSHO shall consult with the supervisor about scheduling a properly immunized CSHO for an immediate or later inspection, as applicable. The CSHO shall then complete the inspection of all other areas of the establishment.

(b) Nonimmunized Walkaround Representative. If, during an inspection, a properly immunized CSHO finds that walkaround representatives of employers and employees are not properly immunized and, therefore, not authorized in the area, a reasonable number of employees and the supervisor of that area shall be consulted concerning workplace health and safety. (See B.7. for additional information.)

- (3) Violations of Other Laws. If a CSHO observes apparent violations of laws enforced by other government agencies, such cases shall be referred to the appropriate agency. Referrals shall be made using appropriate procedures.

9. Closing Conference. At the conclusion of an inspection, the CSHO shall conduct a closing conference with the employer and the employee representatives. (On multi-employer worksites, the CSHO shall decide whether separate closing conferences will be held with each employer representative.) A joint closing conference shall be held with the employer and the employee representatives whenever practicable. Where either party wishes to have a separate conference or where it is not practical to hold a joint closing conference, separate closing conferences shall be held. A written summary of each conference shall be included in the case file.

a. General. The CSHO shall describe the apparent violations found during the inspection and indicate the applicable sections of the standards which may have been violated. Copies of the standards shall be given to both

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the employer and the employee representatives (if not already given during the opening conference). During the closing conference, both the employer and the employee representatives shall be advised of their rights to participate in any subsequent conferences, meetings or discussions.

- (1) Since the CSHO may not have sample results prior to the first closing conference, a second closing conference shall be held by telephone or in person to inform the employer and the employee representatives whether the establishment is in compliance.
 - (a) If the results indicate noncompliance, apparent violations, correction procedures, and interim methods of control shall be discussed.
 - (b) Even if the employer is in compliance, sample results which equal or exceed 50 percent of the permissible exposure limit and any recommendations of the CSHO on good safety and health practices shall be discussed with the employer and the employee representatives.
- (2) When closing conferences are delayed pending receipt of sampling data or for any other reason, the employee representative shall be afforded an opportunity to participate in such delayed conferences.
- (3) The strengths and weaknesses of the employer's occupational safety and health program shall be discussed at the closing conference.
- (4) During the discussion of apparent violations the CSHO shall note any comments on the Ky-OSH-1B and obtain input for establishing correction dates.
- (5) The CSHO shall advise the employee representatives that:
 - (a) Under the Kentucky Occupational Safety and Health Review Commission regulations, if the employer contests, the employees have a right to elect "party status" before the Review Commission.
 - (b) They must be notified by the employer if a notice of contest is filed.
 - (c) They have Discrimination rights. (See D.9.b.(12).)

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- (d) They have a right to contest the citation, penalty and abatement date. (See D.9.b.(6)(a)2.) Such contest must be in writing and must be filed within 15 working days after receipt of the citation.
- b. Specific. During the closing conference the CSHO shall give the employer the publication, "Post Inspection Guide," which explains the responsibilities and courses of action available to the employer if a citation is received. The CSHO shall then briefly discuss the information in the booklet and answer any questions. All matters discussed during the closing conference shall be documented in the case file, including a note describing printed materials distributed.

- (1) Citation Issued. If citations are issued, the original shall be sent to the employer representative at the establishment. In the case of a non-fixed worksite, the original normally shall be sent to the worksite and a copy sent to the employer's headquarters. If it is clear that the employer representative at the worksite does not receive mail deliveries or will not be at the site at the time of delivery, the circumstances shall be documented in the case file; and the original shall be sent to the location designated as most appropriate by the employer representative at the site. In addition, copies shall be sent to any other employer representatives as requested by the attending employer representative.

NOTE: The original citation shall be sent by certified mail, return receipt requested.

- (2) Citation Posting. The citation or a copy of it must be posted at or near the place where each violation occurred to inform the employees of hazards to which they may be exposed. If, because of the nature of the employer's operation, it is not practical to post the citation at or near the place where each violation occurred, the citation must be posted in a prominent place where it will be readily observed by all affected employees. The citation must remain posted for 3 working days or until the violation is corrected, whichever is longer.

- (a) If the citation is amended as a result of an informal conference or other procedure, a copy of the amended citation must be posted along with a copy of the original citation.
- (b) Even if contested, a copy of the citation still must be posted.

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- (c) Reserved.
- (3) Complying with Citation and Notification of Penalty. If the employer does not contest the citation and the penalty and it becomes a final order, then:
 - (a) The cited conditions must be abated by the dates set in the citation, and
 - (b) The penalty must be paid if one was proposed.
- (4) Informal Conference. The CSHO shall advise those attending the closing conference:
 - (a) That a request for an informal conference with the Supervisor available. The informal conference provides an opportunity to:
 - 1 Resolve disputed citations and penalties without the necessity of recourse to the contest litigation process with can be time consuming and expensive;
 - 2 Obtain a more complete understanding of the specific safety or health standards which apply;
 - 3 Discuss ways to correct the apparent violations;
 - 4 Discuss questions concerning proposed penalties;
 - 5 Discuss problems with proposed abatement dates;
 - 6 Discuss problems concerning employee safety and health practices;
 - 7 Learn more of other Ky-OSH Program projects and services available;
 - 8 Obtain answers to other questions.
 - (b) That, if a citation is issued, an informal conference or the request for one does not extend the 15-working-day period in which the employer or the employee representative may contest.
 - (c) That an oral statement of disagreement with or intent to contest a citation, penalty or

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abatement date during an informal conference will not take the place of the required written Notice of Intent to Contest.

- (d) That the employer representative(s) have the right to participate in any informal conference or negotiations between the Supervisor and the employees.
- (e) That the employee representative(s) have the right to participate in any informal conference or negotiations between the Supervisor and the employer in accordance with the guidelines given in G. of this chapter.
- (5) Penalties. The CSHO shall explain that penalties must be paid within 15 working days after the employer receives that citation and notification of penalty. If, however, the employer contests the citation and/or the penalty in good faith, the penalties need not be paid for those items contested until a final decision is made.
- (6) Contesting Citation and Notification of Penalty. The CSHO shall advise the employer that the citation, the penalty and/or the abatement date may be contested if, in good faith, the employer does not agree to the citation, penalty or abatement date.
 - (a) Notice of Contest. The CSHO shall tell the employer that, in order to contest, the Director of Compliance must be notified in writing within 15 working days after receipt of the citation and notification of penalty (working days are Monday through Friday, excluding State and Federal holidays). It shall be emphasized that a notice of intent to contest given orally will not satisfy this requirement to give written notification.

NOTE: The written notification must be postmarked no later than the 15th working day after receipt of the citation, otherwise, the citation has become a final order and the Ky-OSH Program has no jurisdiction to modify it.

- 1 Employer Contest. This written notification, called a Notice of Intent to Contest, must clearly state what is being contested--which item of the

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citation, the penalty, the correction date, or any combination. The CSHO shall ask the employer to read the pamphlet accompanying the citation for additional details.

a If the employer wishes only a later abatement date and there is a valid reason, the Director of Compliance should be contacted. The Director of Compliance may issue an amended citation changing an abatement date prior to the expiration of the 15-working-day period without the employer's filing a contest.

b If the employer contests only the penalty or only some of the citation items, all uncontested items must still be abated by the dates indicated on the citation and the corresponding penalties paid within 15 days of notification.

2 Employee Contest. The CSHO shall indicate that the Law provides that employees or their authorized representative(s) have the right to contest in writing any or all of the citation, penalty and abatement dates set for a violation.

NOTE: The definition of employees' authorized representative appears at D.2.

(b) Contest Process. The CSHO shall explain that, when the Notice of Intent to Contest is properly filed (i.e., received in the Office and postmarked as indicated in D.9.b.(6)(a) Note), the Director of Compliance is required to forward the case to an independent agency, the Kentucky Occupational Safety and Health Review Commission (the Review Commission) at which time the case is officially in litigation.

1 Upon receipt of the Notice of Intent to Contest, the Review Commission will assign the case to an administrative law judge, who will schedule a hearing in a public place close to the workplace.

2 The Review Commission will inform the employer of the procedural requirements

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which must be observed throughout the proceedings.

- 3 The administrative law judge may uphold, modify or eliminate any item of the citation or the penalty which the employer has challenged.

(7) Abatement Action. The CSHO shall explain the following:

- (a) For violations the employer does not contest, the employer is expected to notify the Director of Compliance promptly by letter that the cited conditions have been corrected by the abatement date set in the citation. Failure to do so may trigger a followup inspection. The notification must explain the specific action taken with regard to each violation and the approximate date the corrective action was completed. (See E.4. and Chapter II, F.1.c.(2)(d).)
- (b) When the citation permits an extended time for abatement, the employer must ensure that employees are adequately protected during this time. For example, the citation may require the immediate use of personal protective equipment by employees while engineering controls are being installed. The employer may be requested to send periodic progress reports on actions to correct these violations.

(8) Application for Extension of Abatement Date. The CSHO shall advise the employer that abatement dates are established on the basis of the information available at the time the citations are issued. When uncontrollable events or other circumstances prevent the employer from meeting an abatement date and the 15-working-day contest period has expired, an application may be submitted in writing for an extension of abatement dates. Further information on applications for extensions of abatement dates is included in the Post Inspection Guide.

(9) Followup Inspection. The CSHO shall explain that:

- (a) If the employer receives a citation, a followup inspection may be conducted to verify that the employer has:

- 1 Posted the citation as required.

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- 2 Corrected the violations as required in the citation.
 - 3 Adequately protected the employees during multi-step or lengthy abatement periods.
 - 4 Taken appropriate administrative or engineering abatement steps in a timely manner.
- (b) The employer also has a continuing responsibility to comply with the Law. Any new violations discovered during a followup inspection will be cited. (See H. and Chapter II, F.1.c.)
- (10) Failure to Abate. The CSHO shall explain that to achieve abatement by the date set forth in the citation, it is important that corrective efforts be promptly initiated. The employer shall be reminded that, under the Law, additional penalties of up to \$7,000 per day per violation may be proposed if the employer is found during a followup inspection to have failed to abate by the time required on the Ky-OSH-2 any violations which have not been contested.
- (11) False Information. The CSHO shall explain that, if the employer knowingly provides false information relating to efforts to correct cited conditions or in records required to be maintained or in any other matter related to the Law, criminal penalties are specified in the Law.
- (12) Employee Discrimination. The CSHO shall emphasize that the Law prohibits employers from discharging or discriminating in any way against an employee who has exercised any right under the Law, including the right to make safety or health complaints or to request a Ky-OSH Program inspection. Complaints from employees who believe they have been discriminated against will be evaluated by Ky-OSH Program. If the investigation discloses a probable violation of employee rights, Ky-OSH Program may initiate legal action on behalf of employees whose rights have been violated.
- (13) Variance. The CSHO shall explain that the Law permits, and the agency encourages, the employer to apply to Ky-OSH Program for a temporary variance from a newly promulgated standard if the employer is unable to comply by the effective date because of the unavailability of materials, equipment, or technical personnel. The employer also is encouraged to apply for a permanent

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variance from a standard if the employer believes that the facilities or methods of operation at the establishments under consideration are at least as safe and healthful as would be ensured by the Ky-OSH Program standard. All variance applications must be submitted in writing and must include all applicable items specified in 803 KAR 2:170. More complete information on variances may be obtained from the Director of Compliance.

- (14) SBA Loans. If asked by the employer, the CSHO shall explain that SBA does not currently provide either direct or guaranteed loans for Ky-OSH Program compliance.
- (15) De Minimis Violations. The CSHO shall discuss all conditions noted during walkaround considered to be de minimis, indicating that such conditions are subject to review by the Director of Compliance in the same manner as apparent violations but, if finally classified as de minimis, will not be included on the citation. In addition, the CSHO shall explain to the employer and employee representatives that a condition is considered to be de minimis when it has no direct or immediate relationship to employee safety and health or when it is apparent that the employer is complying with the clear intent of the standard but deviates in a minor, technical or trivial way. Employer comments shall be noted on the Ky-OSH-1B. (See Chapter IV, B.6.)
- (16) Referral Inspection. When applicable, the CSHO shall explain that apparent serious violations which have been observed during the inspection, but which are not within the scope of the CSHO's expertise, will be subject to referral to the supervisor and, as a result, additional inspections may be scheduled at a later date.
- (17) Reserved.
- (18) Reserved.

E. Abatement.

- 1. Period. The abatement period shall be the shortest interval within which the employer can reasonably be expected to correct the violation. An abatement date shall be set forth in the citation as a specific date, not a number of days. When the abatement period is very short (i.e., 5 working days or less) and it is uncertain when the employer will receive the citation, the abatement date shall be set so as to allow for a mail delay and the agreed-upon abatement time. When abatement is witnessed by the CSHO during the inspection, the abatement period shall

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be "Immediately upon receipt" of the citation.

2. Reasonable Abatement Date. The establishment of an abatement date requires the exercise of maximum professional judgement on the part of the CSHO.
 - a. The exercise of this judgment will generally be based on data found during the inspection. In all cases, the employer shall be asked for any available information relative to the time required to accomplish abatement and/or any factors unique to the employer's operation which may have an effect on the time needed for abatement.
 - b. All pertinent factors shall be considered in determining what is a reasonable period. The following considerations may be useful in arriving at a decision.
 - (1) The gravity of the alleged violation.
 - (2) The availability of needed equipment, material, and/or personnel.
 - (3) The time required for delivery, installation, modification or construction.
 - (4) Training of personnel.
3. Abatement Periods Exceeding 30 Calendar Days. Abatement periods exceeding 30 calendar days should not normally be necessary, particularly for safety violations. Situations may arise, however, especially for health violations, where extensive structural changes are necessary or where new equipment or parts cannot be delivered within 30 calendar days. When an initial abatement date is granted that is in excess of 30 calendar days, the reason shall be documented in the case file. Initial abatement dates in excess of one year from the citation issuance date, the reason shall be documented in the case file.
4. Verification of Abatement. The Director of Compliance is responsible for determining if abatement has been accomplished. When abatement is not accomplished at the time of the inspection or the employer does not notify the Director of Compliance by letter of the abatement, verification shall be determined by telephone, documentation shall be included in the case file describing the specific corrective action taken for each violation cited. (See D.9.b.(7)(a) and Chapter II, F.1.c.(3).)
5. Effect of Contest Upon Abatement Period. In situations where an employer contests either (1) the period set for abatement or (2) the citation itself, the abatement period generally shall be considered not to have begun until there has been an affirmation of the citation and abatement period. In accordance with the Law, the abatement period

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begins when a final order of the Review Commission is issued, and this abatement period is not tolled while an appeal is ongoing unless the employer has been granted a stay by the court. In situations where there is an employee contest of the abatement date, the abatement requirements of the citation remain unchanged.

- a. Where the Review Commission or a court alters the abatement period, the abatement period as altered shall be the applicable abatement period.
- b. Where an employer has contested only the amount of the proposed penalty, the abatement period continues to run unaffected by the contest.
- c. Where the employer does not contest, he must abide by the date set forth in the citation even if such date is within 15-day notice of contest period. Therefore, when the abatement period designated in the citation is 15 days or less and a notice of contest has not been filed, a followup inspection of the worksite may be conducted for purposes of determining whether abatement has been achieved within the time period set forth in the citation. A failure to abate citation may be issued on the basis of the CSHO's findings.
- d. Where the employer has filed a notice of contest to the initial citation within the proper contest period, the abatement period does not begin to run until the entry of a final Review Commission order. Under these circumstances, any followup inspection within the contest period shall be discontinued and a failure to abate citation shall not be issued.

NOTE: There is one exception to the above rule. If an early abatement date has been designated in the initial citation and it is the opinion of the CSHO and/or the Director of Compliance that a situation classified as imminent danger is presented by the cited condition, appropriate imminent danger proceedings may be initiated notwithstanding the filing of a notice of contest by the employer.

6. Feasible Administrative, Work Practice and Engineering Controls in Health Inspections. Where applicable (generally, during health inspections), the CSHO shall discuss control methodology with the employer during the closing conference.

- a. Engineering Controls. Engineering controls consist of substitution, isolation, ventilation and equipment modification.

- (1) Substitution may involve process change, equipment replacement or material substitution.

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- (2) Isolation results in the reduction of the hazard by providing a barrier around the material, equipment, process or employee. This barrier may consist of a physical separation or isolation by distance.
 - (3) Ventilation controls are more fully discussed in the Ky-OSH Program Technical Manual, OSHA Instruction CPL 2-2.20B.
 - (4) Equipment modification will result in increased performance or change in character, such as the application of sound absorbent material.
- b. Administrative Controls. Any procedure which significantly limits daily exposure by control or manipulation of the work schedule or manner in which work is performed is considered a means of administrative control. The use of personal protective equipment is not considered a means of administrative control.
- c. Work Practice Controls. Work practice controls are a type of administrative controls by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.
- d. Feasibility. Abatement measures required to correct a citation item are feasible when they can be accomplished by the employer. The CSHO, following current directions and guidelines, shall inform the employer, where appropriate, that a determination will be made as to whether engineering or administrative controls are feasible.
- (1) Types of Feasibility. In general there are two types of feasibility determinations that Ky-OSH Program must make with regard to potential abatement methods. Each will be discussed separately.
 - (2) Technical Feasibility. Technical feasibility is the existence of technical know-how as to materials and methods available or adaptable to specific circumstances which can be applied to cited violations with a reasonable possibility that employee exposure to occupational hazards will be reduced.
 - (a) Sources which can provide information useful in making this determination are the following:

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- 1 Similar situations observed elsewhere where adequate engineering controls do, in fact, reduce employee exposure.
 - 2 Written source materials or conference presentations that indicate that equipment and designs are available to reduce employee exposure in similar situations.
 - 3 Studies by a qualified consulting firm, professional engineer, industrial hygienist, or insurance carrier that show engineering controls are technically feasible.
 - 4 Studies and materials collected and prepared by the Federal Directorate of Compliance Programs, the Directorate of Technical Support and/or the Assistant Regional Administrator for Technical Support.
 - 5 Equipment catalogs and suppliers that indicate engineering controls are technically feasible and are available.
 - 6 Information provided by other government agencies when their regulations apply to operations involved and which may affect or limit the design or type of controls that may be used for abatement.
- (b) Ky-OSH Program's experience indicates that feasible engineering or administrative controls exist for most hazardous exposures.
- (c) The Program Manager is responsible for making determinations that engineering or administrative controls are not feasible.
- (3) Economic Feasibility. Economic feasibility means that the employer is financially able to undertake the measures necessary to abate the citations received. The CSHO shall inform the employer that, although the cost of corrective measures to be taken will generally not be considered as a factor in the issuance of a citation, it will be considered during an informal conference or during settlement negotiations.
- (a) If the cost of implementing effective engineering, administrative, or work practice controls, or some combination of

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such controls, would seriously jeopardize the employer's financial condition so as to result in the probable shut down of the establishment or a substantial part of it, an extended abatement date shall be set when postponement of the capital expenditures would have a beneficial effect on the financial performance of the employer.

(b) If the employer raises the issue that the company has other establishments or other locations within the same establishment with equipment or processes which, although not cited as a result of the present inspection, nevertheless would require the same abatement measures as those under citation, the economic feasibility determination shall not be limited to the cited items alone. In such cases, although the employer will be required to abate the cited items within time allowed for abatement, the opportunity to include both the cited and the additional items in a long-range abatement plan shall be offered.

(c) When additional time cannot be expected to solve the employer's problem of financial infeasibility, the Director of Compliance shall consult with the General Counsel.

e. Reducing Employee Exposure. Whenever feasible engineering, administrative or work practice controls can be instituted even though they are not sufficient to reduce exposure to or below the permissible exposure limit (PEL), nonetheless, they shall be required in conjunction with personal protective equipment to reduce exposure to the lowest practical level.

7. Long-term Abatement Date for Implementation of Feasible Engineering Controls. In situations where it is difficult to set a specific abatement date when the citation is originally issued; e.g., because of extensive redesign requirements consequent upon the employer's decision to implement feasible engineering controls and uncertainty as to when the job can be finished. The CSHO shall discuss the problem with the employer at the closing conference and, in appropriate cases, shall encourage the employer to seek a future informal conference with the Supervisor when further information is available.

a. Final Abatement Date. The CSHO and the Supervisor shall make their best judgement as to a reasonable abatement date. A specific date for final abatement shall, in all cases, be included in the citation. The employer shall not be permitted to propose an abatement plan setting his

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own abatement dates. If necessary, an appropriate application may be submitted later by the employer to the Director of Compliance to modify the abatement date. (See E.9.)

b. Employer Abatement Plan. The employer is required to submit an abatement plan outlining the anticipated long-term abatement procedures.

(1) Such a plan may be submitted for consideration by the Director of Compliance before setting the citation abatement date.

(a) In that case, the citation may be delayed for a brief period with a notation explaining the delay placed in the case file.

(b) If it appears that the citation might be delayed beyond 6 months from the date of alleged violation, the citation shall be issued prior to full consideration of the plan; but the employer shall be given the opportunity to provide as much input as practicable in the setting of the abatement period.

(2) Whether or not a plan is submitted before issuing a citation, an abatement plan shall be provided for in the citation in addition to a final abatement date.

(3) When the plan is submitted, if the engineering or administrative corrections proposed by the employer appear to be all that are feasible based on the current technology, this fact may be stipulated and agreed to between Ky-OSH Program and the employer.

(a) Such an agreement shall permit assurances in advance to the employer that the establishment will be in compliance where the provisions of the plan are fully implemented.

(b) It shall be made clear in the agreement that the employer is not relieved from instituting further engineering (or administrative) controls as they become technically feasible, it is likely that such further controls will lower employee exposure when exposure without personal protective equipment (PPE) remains over the PEL.

(c) In all situations where an agreement is

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proposed, the advice of the General Counsel shall be sought on the legal implications.

- (d) If an agreement is acceptable, the General Counsel shall be requested to assist in drafting the agreement.

(4) Reserved.

8. Multistep Abatement. Citations with multistep abatement periods normally will be issued only in those situations in which ultimate abatement will require the implementation of feasible engineering controls, as distinguished from feasible administrative controls or the use of PPE. Multistep abatements shall be based on the conditions cited and related feasibility considerations.

a. General. A step-by-step program for abatement provides a tool for the CSHO to monitor abatement progress after a citation has been issued, for the employer to make abatement decisions and to set up schedules efficiently, and for the employees to understand the changes being made to the working environment.

- (1) Although abatement of an air contaminant citation normally requires the implementation of feasible engineering and/or administrative controls, abatement may be accomplished in rare cases through the use of PPE, even when engineering or administrative controls are feasible (see E.8.c.(3)).

(2) Reserved.

b. Interim and Long-range Abatement. When the cited employer is found to have no effective personal protection program, in addition to long-term abatement through the use of feasible administrative or engineering controls, proper abatement will include a short-term requirement that appropriate PPE be provided.

- (1) The Director of Compliance, in issuing the citation, shall set a short-range abatement date for prompt temporary protection to employees pending formulation and implementation of long-range feasible engineering and/or administrative controls. Short-range administrative controls and PPE shall be specified in the citation as the interim protection. (See Chapter V, Appendix, E. (Page V-26) for examples.)

- (2) If it has been determined that the employer will use engineering controls to achieve abatement, a specific date shall be set by which the employer can reasonably be expected to implement engineering controls, including enough time for

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the development of engineering plans and designs for such controls, as well as necessary construction or installation time.

- c. Considerations. In providing for multistep abatement the following factors shall be taken into consideration:

- (1) In general, engineering controls afford the best protection to employees, and the employer shall be required to utilize such controls in all instances to the extent feasible. The noise standards and 29 CFR 1910.1000 require the use of either engineering or administrative controls can be successful in controlling employee exposure to contaminants; e.g., maintenance operations involving toxic substances can sometimes be performed at night in the absence of the usual production staff.

NOTE: Employee rotation is an administrative control that Ky-OSH Program prohibits as a method of complying with the permissible exposure limits of carcinogens.

- (2) Economic feasibility is a major issue to be considered when imposing such controls. Requirements that would threaten the economic viability of an entire industry cannot be considered economically feasible under the OSH Law.
- (3) Ky-OSH Program may decide not to require engineering controls for abatement but to allow the use of PPE to abate the violation, at least until such time as engineering controls become a less significant burden for the company when the following conditions are met:
 - (a) If significant reconstruction of a single establishment involving a capital expenditure which would seriously jeopardize the financial condition of the company is the only method whereby the employer could achieve effective engineering controls;
 - (b) If there are no feasible administrative or work practice controls; and
 - (c) If adequate personal protective equipment or devices are available.
- (4) Proper evaluation of the economic feasibility of engineering or administrative controls does not require the Director of Compliance to understand all available economic information before deciding

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that the issue of potential economic infeasibility is involved. It is sufficient that the employer produce evidence of economic hardship adequate to convince the Director of Compliance that abatement by such controls would involve considerable financial difficulty.

- (5) Whenever an employer complains that an unbearable economic burden would result from implementation of engineering or administrative controls, the Director of Compliance shall request evidence from the employer.

- (a) Such evidence shall address the reasonableness of the estimated costs of engineering or administrative controls, including installation, maintenance, and lost productivity, whenever applicable, as well as the progress of the employer compared to that of industry in installing such controls.

- (b) The relative costs of engineering or administrative controls versus PPE may also be provided. Such comparisons shall take replacement costs into account. (6) The Director of Compliance shall discuss the problem with the Regional Administrator, whenever appropriate. The Regional Administrator shall determine whether engineering controls are economically infeasible. In cases with potential national implications, the decision (together with supporting evidence) shall be brought to the attention of the Director of Compliance Programs through the Director of Field Programs.

- (6) Reserved.

- (7) In those limited situations where there are no feasible engineering or administrative controls, full abatement can be allowed by PPE.

9. Applications for Extension of Abatement Period. 803 KAR 2:122 governs the disposition of applications for extension of abatement date. If the employer requests additional abatement time after the 15-working-day contest period has passed, the following procedures are to be observed:

- a. An employer may make application for extension of abatement date with the Director of Compliance, when the employer has made a good faith effort to comply with the abatement requirements of a citation, but abatement has not been completed due to factors reasonably beyond his control. Where application for extension of abatement is

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made, said application shall be filed not later than the close of the day on which the abatement was originally required. A later filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

- b. An application for extension of abatement may be in writing or may be made orally where time does not permit a writing. Where application for extension of abatement is made orally a written application shall follow said oral request within three (3) working days. the application shall include the following information:

- (1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.
- (2) The specific additional abatement time necessary in order to achieve compliance.
- (3) The reasons such additional time is necessary, including the unavailability of professional and technical personnel or materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.
- (4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

- c. The Director of Compliance shall rule on the application for extension of abatement within three (3) days of the receipt of same.

- (1) Where an extension is granted, an amended citation shall be issued and the employer shall post the amended citation at or near the same location as the original citation as under 803 KAR 2:125. Adversely affected employees may appeal pursuant to KRS Chapter 338.141(1) and rules of the Review Commission.
- (2) Where the extension is denied, adversely affected employers shall have the right of appeal as under KRS Chapter 338.141(1) and rules of the Review Commission.

- d. Where jurisdiction of the Review Commission has expired, the Secretary shall again assume authority to modify the abatement under KRS Chapter 338.131(2).

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F. Employer Abatement Assistance.

1. Policy. CSHOs shall offer appropriate abatement assistance during the walkaround as to how workplace hazards might be eliminated. The information shall provide guidance to the employer in developing acceptable abatement methods or in seeking appropriate professional assistance.
2. Type of Assistance. The type of abatement assistance provided will depend on the needs of the employer and the complexity of the hazard. Where standards specify abatement methods, such as guarding of belts and pulleys, the CSHO shall, at a minimum, ensure that the employer is aware of the specifications. For more complex problems, the CSHO shall offer general information on types of controls or procedures commonly used to abate the hazard. Alternative methods shall be provided whenever possible. (See E.6 for more specific requirements on health inspections.)
3. Disclaimers. The employer shall be informed that:
 - a. The employer is not limited to the abatement methods suggested by KY OSH Program;
 - b. The methods explained are general and may not be effective in all cases; and
 - c. The employer is responsible for selecting and carrying out an effective abatement method.
4. Procedures. Information provided by KY OSH Program to assist the employer in identifying possible methods of abatement for alleged violations shall be provided to the employer as it becomes available or necessary. The issuance of citations shall not be delayed.
 - a. Assistance Provided During An Inspection. CSHOs shall utilize their knowledge and professional experience in providing the employer with abatement assistance during the inspection.
 - (1) Before leaving an inspection site and, preferably, during the walkaround when an apparent violation is noted, CSHOs shall determine whether the employer wishes to discuss possible means of abating apparent violations. The discussion may continue at the closing conference.
 - (2) CSHOs shall briefly document abatement information provided to the employer or the employer's negative response to the offer of

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assistance on the appropriate KY OSH-1B Form.

- b. Assistance Provided After An Inspection. If a CSHO cannot provide assistance during an inspection or if the employer has abatement questions after the inspection, the Director shall ensure that additional information, if available, is obtained and provided as soon as possible to the employer. Any communications with the employer shall be documented in the case file.

- 5. Services Available to Employers. Employers requesting abatement assistance shall be informed that KY OSH Program is willing to work with them even after citations have been issued. In addition, employers shall be made aware of the availability free of charge of State on site Consultation Services.

G. Informal Conferences.

- 1. General. Pursuant to 803 KAR 2:130, the employer, any affected employee or the employee representative may request an informal conference.

NOTE: An informal conference may not be scheduled after receipt of a written Notice of Intent to Contest without prior approval of the General Counsel. If the intent to contest is not clear, the Director shall contact the employer for clarification.

- 2. Procedures. Whenever an informal conference is requested by the employer, an affected employee or the employee representative, both parties shall be afforded the opportunity to participate fully. If the requesting party objects to the attendance of the other party, separate informal conferences shall be held. During the conduct of a joint informal conference, separate or private discussions shall be permitted if either party so requests.

- a. Notification of Participants. After an informal conference has been scheduled, the Supervisor shall notify the affected parties of the date, time and place, by telephone and, if considered useful, in writing.

- (1) Documentation of the Supervisor's actions notifying the parties of the informal conference shall be placed in the case file.

- b. Telephone Conferences. The agency believes that better settlements can be arrived at by means of personal conferences between the Supervisor and the employer; consequently, informal conferences shall

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normally not be held by telephone.

- (1) When circumstances exist (e.g., the employer or the employee representatives would be required to travel long distances, there is insufficient time remaining for travel, or only the penalty amount is likely to be at issue) which the Supervisor believes will justify a telephone conference, such circumstances shall be documented in the case file.
- (2) If a telephone conference is held, all of the procedures regarding notification of affected parties, participation of KY OSH Program officials, conduct of the conference, documentation of discussions, and decision-making, outlined in G.2.a., c., d., and e., shall be followed as far as practicable.
- (3) The reasons justifying any departures from those procedures shall be explained in the case file.

c. Participation by KY OSH Program Officials. The inspecting CSHOs and their supervisors shall be notified of an upcoming informal conference and, if practicable, given the opportunity to participate in the informal conference (unless, in the case of the CSHO, the Area Director anticipates that only a penalty adjustment will result). They shall be advised of any changes made by the Supervisor in the event that they were unable to participate.

- (1) In complex cases, in order to ensure that discussions of any possible settlement or modifications to the citation(s) and/or penalty may be completely and accurately recalled, at least one other KY OSH Program employee (in addition to the Supervisor) may be present at the informal conference. This employee may be the CSHO, Program Manager, a clerical staff member, or other assigned person.
- (2) A second KY OSH Program staff member (compliance officer, Program Manager, or other assigned person) shall attend all informal conferences in the following situations:
 - (a) Cases which involve total proposed penalties of \$100,000 or more.
 - (b) Cases which are so lengthy or complex that an additional individual is needed

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to provide assistance to the principal
KY OSH Program representative.

- (3) The Supervisor shall ensure that notes are made indicating the basis for any decisions taken at or as a result of the informal conference. It is appropriate to tape record the informal conference and to use the tape recording in lieu of written notes, but the tape recording is not a substitute for the second KY OSH Program conference participant under paragraph (2) above.

d. Conduct of the Informal Conference. The Supervisor shall conduct the informal conference in accordance with the following guidelines:

- (1) Opening Remarks. The opening remarks shall include discussions of the following:
 - (a) Purpose of the informal conference.
 - (b) Rights of participants.
 - (c) Contest rights and time restraints.
 - (d) Limitations, if any.
 - (e) Settlements of cases.
 - (f) Other relevant information.
- (2) Conference. The conference shall include discussion of any relevant matters including citations, safety and health programs, conduct of the inspection, means of correction, and penalties, in accordance with the following:
 - (a) All parties shall be encouraged to participate fully so their views can be properly considered.
 - (b) Positions on all issues discussed shall be fully considered before making a determination regarding possible settlement of the case in accordance with current KY OSH Program procedures.
 - (c) KY OSH Program representatives shall make every effort to assist both the employer and the affected employees and/or their representatives to improve safety and health in the workplace.

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- (3) Closing. At the conclusion of the discussion the main issues and potential courses of action shall be summarized. A copy of the summary, together with any other relevant notes or tapes of the discussion made by the Supervisor, shall be placed in the case file.
- e. Decisions. At the termination of the informal conference, the Supervisor shall make a decision as to what action is appropriate in the light of facts brought up during the conference.
- (1) When preparing to make a decision to settle a case, the Supervisor shall make a reasonable effort to obtain the views of the employee representative, if there is one and if he/she was not in attendance at the conference.
 - (2) Changes to citations, penalties or abatement dates normally shall be made by means of an informal settlement agreement in accordance with current KY OSH Program procedures; the reasons for such changes shall be documented in the case file.
 - (3) Employers shall be informed that they are required by 803 KAR 2:130 to post copies of all amendments to the citation resulting from informal conferences. This regulation covers amended citations, citation withdrawals and settlement agreements.
 - (4) Affected parties shall be notified of the results and/or decisions of the informal conference in accordance with current KY OSH Program procedures.
 - (5) The CSHOs who conducted the inspection and their supervisors shall be informed of the results and/or decisions of informal settlement agreements and/or amended citations.
 - (6) For more detail on settlement agreements, see Chapter V, H.
- f. Failure to Abate. If the informal conference involved an alleged failure to abate, the Supervisor may set a new abatement date in the informal settlement agreement, documenting for the case file the time that has passed since the original citation, the steps that the employer has taken to inform the exposed employees of their risk and to protect them from the hazard, and the measures that will have to be taken to correct the condition.

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- (1) Once a new abatement date has been set, a modification of abatement date following current IMIS procedures shall be entered into the data system.
- (2) A letter shall be sent to the employer reminding him/her in the strongest possible terms that abatement is legally required if no written notice of contest is submitted within the contest period for the Notification of Failure to Abate Alleged Violation.
- (3) The employer shall also be reminded that if there is any problem in meeting the new abatement date after it becomes a final order, a written request for extension of abatement must be filed with the Director in accordance with E.9.a.

H. Followup Inspections.

1. Inspection Procedures. The primary purpose of a followup inspection is to determine if the previously cited violations have been corrected. Normally, there shall be no additional inspection activity unless, in the judgment of the CSHO, there have been significant changes in the workplace which warrant further inspection activity. In such a case, the supervisor shall be consulted.
2. Failure to Abate. A failure to abate exists when the employer has not corrected a violation for which a citation has been issued or has not complied with interim measures involved in a multi-step abatement within the time given.
 - a. Initial Followup. The initial followup is the first followup inspection after issuance of the citation.
 - (1) If a violation is found not to have been abated, the CSHO shall inform the employer that the employer is subject to a Notification of Failure to Abate Alleged Violation and proposed additional daily penalties while such failure or violation continues.
 - (2) Failure to comply with enforceable interim abatement dates involving multi-step abatement shall be subject to a Notification of Failure to Abate Alleged Violation.
 - (3) Where the employer has implemented some controls, but other technology was available which would have brought the levels of airborne concentrations or noise to within the

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regulatory requirements, a Notification of Failure to Abate Alleged Violation normally shall be issued. If the employer has exhibited good faith, a late PMA for extenuating circumstances may be considered in accordance with E.9.a.(2).

- (4) Where an apparent failure to abate by means of engineering controls is found to be due to technical infeasibility, no failure to abate notice shall be issued; however, if proper administrative controls, work practices or personal protective equipment are not utilized, a Notification of Failure to Abate Alleged Violation shall be issued.

- (5) Reserved.

b. Second Followup. Any subsequent followup after the initial followup dealing with the same violations is a second followup.

- (1) After the Notification of Failure to Abate Alleged Violation has been issued, the Director shall allow a reasonable time for abatement of the violation before conducting a second followup. If the employer contests the proposed additional daily penalties, a followup inspection shall still be scheduled to ensure correction of the original violation.

- (2) If a second followup inspection reveals the employer still has not corrected the original violations, a second Notification of Failure to Abate Alleged Violation with additional daily penalties shall be issued if the Director, after consultation with the Secretary and General Counsel, believes it to be appropriate.

3. Reports. The applicable identification and description sections of the KY OSH-1B/1B-IH Form shall be used for documenting correction of willful, repeated and serious violations and failure to correct items during followup inspections. If violation items were appropriately grouped in the KY OSH-1B/1B-IH in the original case file, they may be grouped on the followup KY OSH-1B, if not, individual KY OSH-1B/1B-IH Forms shall be used for each item. The correction of other-than-serious violations may be documented in the narrative portion of the case file.

- a. Proper Documentation. The correction circumstances observed by the CSHO shall be specifically described in the KY OSH-1B/1B-IH, including any applicable dimensions, materials, specifications, personal

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protective equipment, engineering controls, measurements or readings, or other conditions. Brief terms such as "corrected" or "in compliance" will not be accepted as proper documentation for violations having have been corrected. When appropriate this written description shall be supplemented by a photograph and/or a videotape to illustrate correction circumstances. Only the item description and identification blocks need be completed on the followup KY OSH-1B/1B-IH with an occasional inclusion of an applicable employer statement concerning correction under the employer knowledge section, if appropriate.

- b. Sampling. The CSHO conducting a followup inspection to determine compliance with violations of air contaminants and noise standards shall decide whether sampling is necessary, and if so, what kind; i.e., spot sampling, short-term sampling or full-shift sampling. If there is reasonable probability of an issuance of a Notification of Failure to Abate Alleged Violation, full-shift sampling is required.
 - c. Narrative. The CSHO shall include in the narrative the findings pursuant to the inspection, along with recommendations for action. In order to reach a valid conclusion when recommending action, it is important to have all the pertinent factors available in an organized manner.
 - d. Failure To Abate. In the event that any item has not been abated, complete documentation shall be included on an KY OSH-1B.
4. Followup Files. The followup inspection reports shall be a separate case file.

I. Conduct of Monitoring Inspection.

- 1. General. An inspection shall be classified as a monitoring inspection when a safety/health inspection is conducted for one or more of the following purposes:
 - a. To determine the progress an employer is making toward final correction.
 - b. To ensure that the target dates of a multi-step abatement plan are being met.
 - c. To ensure that an employer's petition for the modification of abatement dates is made in true and good faith and that the employer has attempted to implement necessary controls as expeditiously as possible.

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- d. To ensure that the employees are being properly protected until final controls are implemented.
 - e. Reserved.
 - f. Reserved.
2. Procedures. Monitoring inspections shall be conducted in the same manner as followup inspections described under H of this chapter.

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APPENDIX A

NARRATIVE, KY OSH-1A, FORM.

A. General. The KY OSH-1A Form shall be used to record information relative to organized employee groups, authorized representatives of employees, management officials contacted, management representatives accompanying CSHOs on the walkaround inspection and other persons contacted during the course of an inspection.

1. The KY OSH-1A Form shall also be used to record other pertinent data about the inspection whenever indicated by Chapter III or by the professional judgement of the CSHO or the supervisor.

2. All data recorded on the KY OSH-1A Form shall be as complete and accurate as circumstances require.

ITEM

INFORMATION NEEDED

1. Dates in the plant Enter all dates that the CSHO is physically in the plant from the initial contact through the final closing.

2. Names and addresses of all organized employee groups. List the organizational names, addresses and telephone numbers of all authorized employee groups. In the case of a union, enter the local number. If there are no employee group representatives, enter "none".

3. Authorized Representatives of employees. Show individual names and addresses of authorized representatives of employees, their telephone numbers, organizations and titles. In the column marked "WA," check the "Y" block by each representative's name if that person participates in the walkaround. If an authorized representative takes part in only a portion of the walkaround, check the "Y" box and indicate in which portions of the walkaround that individual participates (e.g., "electrical shop, warehouse") or the percentage of time during which the individual takes part in the walkaround (e.g., "60%"). Indicate whether the employer is a corporation, partnership, sole proprietorship, etc. (Do not use the word, "owner.") Indicate if the employer named is a subsidiary of

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another firm.

- | | |
|--|---|
| 4. Employer Representative Contacted. | List the names, titles and functions of all employer representatives contacted. Under "Function," enter one or more of the indicated codes to describe the type of activity engaged in by the contacted official. |
| 5. Description of Worksite. | Describe: A. the type of business, B. Construction of building or type of work area, C. Description of Process. |
| 6. Mark the material provided to the employer. | Check off the appropriate materials which were provided to the employer during the inspection. |
| 7. Does employer comply with position requirements of Notice of Rights and Responsibilities? | Check Yes or No whether poster is posted. |
| 8. Penalty Reduction Calculations. | Complete check list for penalty calculations. See Chapter VI for instructions. |
| 9. Followup Inspection Recommended. | Check "Yes" or "No" to indicate whether a followup inspection appears necessary according to the guidelines given in Chapters II and III. Briefly state the reason for the recommendation. If "yes," also indicate the items which require a followup. The reason for recommending a followup must be placed on the KY OSH -1B relating to that item. |
| 10. Other Persons Contacted. | If, during the inspection, other persons are interviewed for any reason, give their names and the other information requested on the form. |

INDUSTRIAL HYGIENE (IH) INSPECTION OUTLINE

This Inspection Outline is to be used during all health inspections as a guide for the collection of information that is required according to the FOM but which is not recorded on other

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forms included in the case file. The outline is intended as a guide for completion of the case file. Current information which is included and readily accessible elsewhere in the case file or in other case files need not be rewritten although a reference will usually be appropriate. All currently accurate information that will be necessary or useful for the review process shall be included; the outline is not intended merely to generate additional paperwork. A narrative covering the item 20, Additional Comments, for all health inspections. Additional blank pages can be used if necessary.

A. Nature and Scope of the Inspection.

1. Reason for inspection if not fully indicated on the KY OSH-1;
2. Background information including everything of current concern to the present inspection; e.g., open citations, variances, etc.;
3. Information concerning the scope (IH) of the inspection; and, if a complete health inspection is not to be conducted, a brief explanation of the reasons why not.

B. Opening Conference. Any unusual circumstances encountered; e.g., advance notice (including to whom given, date and employee or employee representative notified), presentation of credentials (if other than highest ranking employer representative), selection of management and employee representation for walkaround, extent of the initial walkaround, etc.

C. Workplace Observations.

1. Operations observed during the initial walkaround including:
 - a. Significant process information including information on all potentially hazardous operations observed, including both chemicals used (with their approximate volumes, when significant) and physical agents encountered which may (potentially) affect employee health;
 - b. Location of potentially exposed employees with an indication as to whether or not sampling is to be conducted and, if not, why not;
 - c. Proposed action and/or conclusions relating to potential hazards and complaint or referral items (e.g., citations will be issued, sampling will be conducted or is not necessary, a safety referral will be made, no additional action, etc.) together with supporting reasons.
2. Plant layout including a sketch made during the initial

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walkaround if the establishment does not have a layout chart of the equivalent available; the sketch shall include, as a minimum, building numbers or names, pertinent operation (process) areas with type of operation or process (including flow chart) indicated, distribution of major process equipment, including any engineering or administrative controls (when pertinent) and relative dimensions of the work area.

D. Occupational Health Program. An adequate description of the employer's health program shall be included in each case file. Supporting notes shall include CSHO observations of program enforcement as well as relevant comments made by management or employees regarding safeguards, precautions, protective equipment, routine procedures used for protection in plant processed, training efforts, experience of employee illness or symptoms, etc. Specific comments shall be made on each of the following program elements, as appropriate:

1. Monitoring program (who, how analysis, schedules and results);
2. Medical program (frequency, protocols and records);
3. Education and training programs (extent, emergency procedures);
4. Recordkeeping program (types, duration and accessibility to employees);
5. Compliance program (hazard control):
 - a. Engineering/administrative controls;
 - b. PPE program;
 - c. Regulated area procedures;
 - d. Emergency procedures;
 - e. Written compliance plan;
6. Personal hygiene facilities and practices;
7. Labeling and posting policy and procedures.

E. Closing Conference(s) including any pertinent details, such as whether a joint conference was held with employer and employee representatives as well as comments regarding explanations given (and to whom) on available inspection results, discussions of general control guidelines and recommendations made (with date), and other general comments, including comments on good faith and cooperation. Notes regarding additional closing conferences shall also be

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included here.

SAFETY INSPECTION OUTLINE

A. NATURE AND SCOPE:

B. OPENING CONFERENCE:

C. WALKAROUND OBSERVATIONS:

D. OCCUPATIONAL SAFETY PROGRAM:

FIRST AID:

INJURY AND ILLNESS RECORDS:

FIRE PROTECTION PROGRAM:

LOCKOUT/ELECTRICAL SAFE WORK PRACTICES:

HAZARD COMMUNICATION:

EMERGENCY RESPONSE:

CONFINED SPACE ENTRY:

HEALTH INFORMATION:

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NARRATIVE

KYOSH-1A

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DIVISION OF COMPLIANCE
OCCUPATIONAL SAFETY AND HEALTH PROGRAM

=====

1. Dates in the plant:

2. Names and Addresses of All Organized Employee Groups

Name :
Local No : Phone:
Street Address:
City :
State : Zip:

3. Authorized Representatives of Employees

Name :
Organization :
Title :
Phone :
Home Address :
City :
State : Zip:
WA :

4. Employer Representatives Contacted

I= Credentials Presented C= Closing Conference
O= Opening Conference M= Other Mgmnt Official

Name :
Title :
Function:
WA :

Name :
Title :
Function:
WA :

Name :
Title :
Function:
WA :

Name :
Title :
Function:
WA :

5. Description of Worksite

A. Type of Business:

B. Construction of building or type of work area:

C. Description of Process

1. Raw materials used:

2. Major processes:

3. Products manufactured:

6. Mark the material provided to the employer:

A. Poster: B. Recordkeeping: C. Standards:

D. Other :

E. Provided on previous inspection:

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7. Does employer comply with posting requirements of Notice of Rights & Responsibilities (Y/N):

8. **Penalty Reduction Calculations**

GOOD FAITH CALCULATION

Evaluation of Safety and Health Program

0=Nonexistent 1=Inadequate 2=Average 3=Above average

Comprehensiveness of Safety & Health Program? : Written? Y/N:

Communication to Employees? :

Enforcement of Safety Rules? :

Safety Training Program? :

Health Training Program? :

Accident/Injury Investigations

performed by employer? :

Preventative Action taken? :

Additional Comments :

25% reduction for an effectively written and implemented Safety and Health Program, includes all programs required under KY OSH Standards (ie. Hazard Communication, lockout-tagout, emergency response, safety / health programs for construction 1926.20, and trenching / excavation) with only incidental deficiencies.

15% reduction for a documented safety and health program but with more than only incidental deficiencies.

0% reduction for no safety and health program.

GOOD FAITH PENALTY REDUCTION:

HISTORY PENALTY REDUCTION :

10% for lack of Serious, Willful, or Repeated violations in the past three years.

0% Document inspection number, date issued, and type of citations :

SIZE PENALTY REDUCTION :

1-25	60%
26-100	40%
101-250	20%
251 or More	0%

9. Follow-up Recommended Y/N :
If yes why?:

10. OTHER EMPLOYEES CONTACTED

Name	Address	Occupation	Local#	Phone #

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NOTICE OF ALLEGED IMMINENT DANGER, KY-OSH-8 FORM.

- A. General. Before a CSHO issues a Notice of Alleged Imminent Danger, KY-OSH-8 Form, the Director shall be informed of all circumstances regarding the imminent danger situation and shall give approval in accordance with the procedures in Chapter VII, C.4.
1. This form is the means by which the CSHO officially informs the employers and the affected employees that an imminent danger exists.
 - a. The form shall be signed by the CSHO and posted at or near the area in which the exposed employees are working.
 - b. The file copy of the KY-OSH-8 Form will be attached to the KY-OSH-1 Form and kept in the case file.
 2. The CSHO shall personally post the KY-OSH-8 Form at or near the area in which the exposed employees are working. If the employer refuses to allow the CSHO to post the notice, then the CSHO shall immediately contact the Supervisor for instructions.
- B. Instructions. When authorized by the Director to post the KY-OSH-8 Form, the CSHO shall first complete the form in accordance with the instructions which follow.
1. The address shall have been already imprinted on the form in the lower left-hand corner prior to issuance to the CSHO.
 2. The official name and address of the establishment being inspected shall be typed or clearly handwritten in the upper left-hand corner of the form. The inspection number and reporting ID of the employer most directly affected by the KY-OSH-8 posting shall be entered into the blocks at the upper right-hand corner.
 3. On the line provided at the top of the form show the address and the name or designation of the workplace or portion of the workplace inspected.
 4. The hazards to which employees are exposed shall be described briefly under the "Description of Alleged Imminent Danger" heading of the form. This shall be done in nontechnical language so that all employees who may be exposed can understand the danger.
 5. The lines provided for signing and dating the form shall include the location where the KY-OSH-8 Form was posted and the time and date of posting. The CSHO shall sign where indicated.

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6. Only one KY-OSH-8 Form shall be posted at or near each imminent danger area in which the exposed employees are working. In cases where there are more than one employer, a file copy of the form shall be attached to each employer's KY-OSH-1 Form as part of the case file.
7. If, during an inspection, more than one Notice of Alleged Imminent Danger, KY-OSH-8 Form, are issued to the employer, number the notices consecutively in the upper right-hand corner and show the number of pages. This will necessitate writing in the word "Number" and after that the number of the notices. For example, three KY-OSH-8 Forms are issued during one inspection. The forms would then show: "Number 1, page 1 of 3; Number 2, page 2 of 3; and Number 3, page 3 of 3."

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KY-OSH-8 [BLANK]

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PHOTO MOUNTING WORKSHEET, KY-OSH-89 FORM.

- A. General. This form shall be used by the CSHO to mount photographs taken during an inspection.
- B. Instructions. On the left side of each form there is space for two photographs to be mounted; in the right column of each form, the required information related to each photograph shall be supplied as follows:

Inspection Number. Enter the inspection number from the KY-OSH-1 Form in the upper right-hand corner.

ITEM

INFORMATION NEEDED.

- | | |
|--|--|
| 1. Photo ID Number. | Enter the appropriate roll and frame number (roll/frame) of the photo as recorded in Item 21 on the related KY-OSH-1B Form. |
| 2. Date/Time. | Enter the date and time that the photo was taken. |
| 3. Citation Number. | From the KY-OSH-1B Form, enter the number of the citation in which the employer was cited for the violation depicted in the photograph. If no specific violation is pictured, enter N/A. |
| 4. Item Number. | From the KY-OSH-1B Form, enter the item number of the violation depicted in the photograph. |
| 5. Instance No. | From the KY-OSH-1B Form, enter the instance of the violation depicted in the photograph. |
| 6. Location:
(Photo and Photographer) | Describe (or diagram) the position of the photographer in relations to the hazard depicted and locate the hazard in the worksite. Identify the photographer by name, if other than the primary CSHO assigned to the inspection. |
| 7. Description. | Describe in appropriate detail the violation depicted, and the environment of the worker; identify employees photographed (unless already identified on the related KY OSH-1B) and any other relevant factors. If, during the analysis of the photo, the |

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CSHO discovers violations not noted during the inspection, these shall be noted; and the employer informed of the problem so that it may be corrected. This shall be done even though that violation is not included in any citation issued for that inspection.

8. CONFIDENTIAL
MATERIALS

Mark "X" in the block provided if a trade secret could be revealed by the photograph. This is necessary for disclosure determinations and must be supported on the related Worksheet, KY-OSH-1B Form. Future printing of this Form will differentiate "Trade Secret" from security classified materials.

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KY OSH Program-89

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NOTE TAKING SHEET, KY-OSH-94 FORM.

- A. General. This Note Taking Sheet is designed as a continuation of item 20 of the KY-OSH-1A, Additional Comments. The front of the form is lined and the back is imprinted with a grid, which may be used for graphs, drawings, sketches and the like.
- B. Instructions. Whenever additional space is needed beyond that provided by the KY-OSH-1A, the CSHO shall use the KY-OSH-94 Form. The form shall be completed in accordance with the directions which follow.
1. Company. The name of the employer shall be entered in the first block at the top of the form. This name shall correspond with the name recorded in item 8 of the KY-OSH-1.
 2. Inspection Location. The site address shall be entered in this block, corresponding with the address given in item 10 of the KY-OSH-1.
 3. Inspection Number. The inspection number from the KY-OSH-1 shall be entered in this block.
 4. Pagination. If, during an inspection, more than one Note Taking Sheet, KY-OSH-94 Form, is used, number the form consecutively in the upper right-hand corner and show the number of pages. This will necessitate writing in the number of the pages. For example, three KY-OSH-94 Forms are used during one inspection. The forms would then show: "Page 1 of 3; Page 2 of 3; and Page 3 of 3."

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INSPECTION CASE FILE ACTIVITY DIARY (Suggested Format)

A. General. The Inspection Case File Activity Diary is designed to provide a ready record and summary of all actions relating to a case.

1. As directed in Chapter I, C.3.1., it shall include a chronological record of significant actions taken affecting the case, beginning with the opening conference and ending with the closing of the case when all outstanding penalties have been paid and abatement requirements have been met.

2. Maintenance of the diary is the responsibility of the Supervisor. All significant contacts with the employer and other persons or entities involved in the case shall be noted.

3. The format shown here is model for a form to be proposed at a later date; pending the adoption of an official form, the actual diary shall be reproduced by the Office.

B. Instructions. The Inspection Case File Activity Diary shall be displayed prominently in the case file for audit purposes, and shall contain at least the types of information specified below at B. 1 through 7. If using the model form, complete it in accordance with the instructions that follow.

1. Company. The name of the employer shall be entered in the first block at the top of the form and shall correspond with the name recorded in item 8 of the KY-OSH-1.

2. Inspection Location. The site address shall be entered in this block, corresponding with the address given in item 10 of the KY-OSH-1.

3. Inspection Number. The inspection number from the KY-OSH-1 shall be entered in this block.

4. Date. Enter the date of each significant action being recorded.

5. Action. Briefly describe the action taken.

6. Initials. Enter the initials of the person recording the action.

7. Pagination. The Inspection Case File Activity Diary may comprise as many pages as needed. If more than one sheet is used, number the pages consecutively in the upper right-hand corner and show the number of pages.

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CHAPTER 3 GENERAL INSPECTION PROCEDURES

[BLANK]Sample Diary-1

